



FEDERAL REGISTER

VOLUME 23

NUMBER 89

Washington, Tuesday, May 6, 1958

TITLE 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

PART 29—FRUIT BUTTERS, FRUIT JELLIES, FRUIT PRESERVES, AND RELATED PRODUCTS; DEFINITIONS AND STANDARDS OF IDENTITY

EFFECTIVE DATE OF ORDER AMENDING IDENTITY STANDARD FOR FRUIT JELLY; PRICKLY PEAR JELLY

In the matter of adopting a definition and standard of identity for prickly pear jelly:

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 401, 52 Stat. 1046, 68 Stat. 54; 21 U. S. C. 341) and in accordance with the authority delegated to the Commissioner of Food and Drugs by the Secretary of Health, Education, and Welfare (22 F. R. 1045), notice is hereby given that no objections were filed to the order published in the FEDERAL REGISTER of March 22, 1958 (23 F. R. 1919), and the amendment promulgated by that order will become effective on May 21, 1958.

(Sec. 701, 52 Stat. 1055, as amended; 21 U. S. C. 371. Interprets or applies sec. 401, 52 Stat. 1046, as amended; 21 U. S. C. 341)

Dated: April 29, 1958.

[SEAL] GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F. R. Doc. 58-3375; Filed, May 5, 1958; 8:49 a. m.]

TITLE 7—AGRICULTURE

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

[Lemon Reg. 736, Amtd. 1]

PART 953—LEMONS GROWN IN CALIFORNIA AND ARIZONA

LIMITATION OF HANDLING

Findings. 1. Pursuant to the marketing agreement, as amended, and Order No. 53, as amended (7 CFR Part 953), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.; 68 Stat. 906, 1047), and upon the

basis of the recommendation and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons as hereinafter provided will tend to effectuate the declared policy of the act.

2. It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this amendment until 30 days after publication hereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended, is insufficient, and this amendment relieves restriction on the handling of lemons grown in California and Arizona.

Order, as amended. The provisions in paragraph (b) (1) (ii) of § 953.843 (Lemon Regulation 736; 23 F. R. 2787) are hereby amended to read as follows:

(ii) District 2: 418,500 cartons.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c)

Dated: May 1, 1958.

[SEAL] S. R. SMITH,
Director, Fruit and Vegetable
Division, Agricultural Mar-
keting Service.

[F. R. Doc. 58-3385; Filed, May 5, 1958; 8:50 a. m.]

TITLE 29—LABOR

Chapter V—Wage and Hour Division, Department of Labor

PART 526—INDUSTRIES OF A SEASONAL NATURE

DETERMINATION THAT PACKING, HANDLING, PREPARING IN THEIR RAW OR NATURAL STATE OF FRESH FRUITS AND VEGETABLES IS PART OF AN INDUSTRY OF A SEASONAL NATURE; AMENDMENT

On December 6, 1957, notice was published in the FEDERAL REGISTER (22 F. R. (Continued on next page))

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FEDERAL REGISTER

Published daily, except Sundays, Mondays, and days following official Federal holidays, by the Federal Register Division, National Archives and Records Service, General Services Administration, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500, as amended; 44 U. S. C., ch. 8B), under regulations prescribed by the Administrative Committee of the Federal Register, approved by the President. Distribution is made only by the Superintendent of Documents, Government Printing Office, Washington 25, D. C.

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CFR SUPPLEMENTS

(As of January 1, 1958)

The following Supplements are now available:

Title 25, Rev. Jan. 1, 1958 (\$4.50)

Title 26 (1954), Rev. Jan. 1, 1958 (\$3.00)

Title 49, Parts 91-164, Rev. Jan. 1, 1958 (\$5.00)

Previously announced: Title 3, 1957 Supp. (\$0.40); Titles 4-5 (\$1.00); Title 7, Parts 1-209 (\$2.25), Parts 900-959 (\$1.00); Title 8, Rev. Jan. 1, 1958 (\$3.25); Title 9 (\$0.75); Titles 10-13 (\$1.00); Title 14, Parts 1-39 (\$0.50); Title 17 (\$0.65); Title 18 (\$0.50); Title 20 (\$1.00); Titles 22-23, Rev. Jan. 1, 1958 (\$4.25); Titles 28-29 (\$1.50); Titles 30-31 (\$1.50); Title 32, Parts 1-399 (\$1.25), Parts 400-699 (\$1.75), Parts 700-799 (\$0.60), Part 1100 to end (\$0.50); Titles 35-37 (\$1.00); Title 38 (\$0.40); Title 39 (\$0.60); Titles 40-42 (\$1.00); Title 43 (\$0.70); Title 46, Parts 1-145 (\$0.75), Parts 146-149, Rev. Jan. 1, 1958 (\$5.50); Title 49, Parts 1-70 (\$0.70), Part 165 to end (\$0.75)

Order from Superintendent of Documents, Government Printing Office, Washington 25, D. C.

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9753) of a proposed amendment of the determination of August 24, 1940 (5 F. R. 3167) that the packing, handling, and preparing in their raw or natural state of perishable or seasonal fresh fruits and vegetables is a part of an industry of a seasonal nature within the meaning of section 7 (b) (3) of the Fair Labor Standards Act of 1938 (52 Stat. 1063, as amended; 29 U. S. C. 207 (b) (3)). Interested persons were afforded an opportunity to submit written data, views, or arguments regarding the proposed amendment.	
The only objections to the proposal received were from interested persons in the potato packing industry in the Red	

River Valley area of Minnesota and North Dakota. These objections were based on the misapprehension that under the amended determination the operations of potato wash plants in that area could be construed to constitute "in-transit handling" in connection with the distribution of the commodity and therefore be considered outside the scope of the exemption. These potato wash plants are engaged in receiving, washing, sizing, grading, packing, and loading potatoes for shipment to market. Available information shows that their operations are associated with the assembling of potatoes and are, therefore, within the scope of the proposed amendment.

This amendment is based upon the statutory authority contained in section 1 (b) (3) of the Fair Labor Standards Act of 1938. Its purpose is to more clearly express the Administrator's long standing interpretation of the scope of the seasonal industry determination applicable to fresh fruits and vegetables. Since no substantive change in the determination will be effected by adoption of this amendment, and in view of the fact that the determination has been administratively interpreted consistent with the amendment since its promulgation, good cause exists for not delaying the effective date of the amendment.

Accordingly, pursuant to authority under section 7 (b) (3) of the Fair Labor Standards Act of 1938 (52 Stat. 1063), as amended; 29 U. S. C. 207 (b) (3), Reorganization Plan No. 6 of 1950 (64 Stat. 1263; 3 CFR, 1950 Supp., p. 165), General Orders Nos. 45-A (15 F. R. 3290) and 45-A (22 F. R. 7614) of the Secretary of Labor, and § 526.5 (b) of Title 29, Code of Federal Regulations, I hereby adopt the proposal. Paragraph 3 of the determination of August 24, 1940 (5 F. R. 3147) is hereby amended by adding at the end thereof the following:

Note: As used in this determination packing, handling, and preparing in their raw or natural state of perishable or seasonal fresh fruits and vegetables means these operations when associated with the assembling of these commodities, including packing, handling, and preparing at packing houses; handling and preparing preceding entry of the commodities into packing houses and processing plants; and handling and preparing of farm-packed produce at packing houses and at shipping sheds or platforms which, except for packing the commodities, perform the same function as packing houses. The operations of packing, handling, and preparing are not included in the determination when they are performed as essentially distributive functions. The term "distributive functions" includes the wholesaling, repacking and in-transit handling after the commodities have left the packing houses and shipping sheds or platforms referred to above.

The above amendment shall be effective upon publication in the FEDERAL REGISTER.

(Sec. 7, 52 Stat. 1063, as amended; 29 U. S. C. 207)

Signed at Washington, D. C., this 29th day of April 1958.

CLARENCE T. LUNDQUIST,
Acting Administrator.

[F. R. Doc. 58-3383; Filed, May 5, 1958; 8:50 a. m.]

TITLE 32—NATIONAL DEFENSE

Chapter V—Department of the Army

Subchapter B—Claims and Accounts

PART 536—CLAIMS AGAINST THE UNITED STATES

MISCELLANEOUS AMENDMENTS

In § 536.26, amend paragraph (e) (2) and the first sentence of paragraph (n) (5) to read as follows:

§ 536.26 *Claims arising in foreign countries.* * * *

(e) *Claims not payable.* * * *

(2) Falls under any workmen's compensation law or regulation, whether Federal Employees Compensation Act of September 7, 1916 (39 Stat. 742), as amended (5 U. S. C. 751), Longshoremen's and Harborworkers Compensation Act (44 Stat. 1424; 33 U. S. C. 901), or local law or custom, except when specifically authorized by The Judge Advocate General, or his designee, in each case;

(n) *Foreign Claims Commissions.* * * *

(5) *Monetary jurisdiction.* Unless specifically limited in the appointing orders, a commission of one member shall have authority to settle claims not over \$1,000. * * *

[C2, AR 25-90, April 28, 1958] (Sec. 3012, 70A Stat. 157; 10 U. S. C. 3012)

[SEAL]

R. V. LEE,

Major General,

U. S. Army,

Acting The Adjutant General.

[F. R. Doc. 58-3357; Filed, May 5, 1958; 8:45 a. m.]

Subchapter G—Procurement

PART 590—GENERAL PROVISIONS

PART 592—PROCUREMENT BY NEGOTIATION

PART 596—CONTRACT CLAUSES

PART 599—BONDS AND INSURANCE

PART 602—GOVERNMENT PROPERTY

PART 606—SUPPLEMENTAL PROVISIONS

MISCELLANEOUS AMENDMENTS

1. Add paragraph (c) to § 590.201-9, as follows:

§ 590.201-9 *Sources of supplies.* * * *

(c) *Procurement of perishable subsistence.* Perishable subsistence may be procured from other than "regular dealers" as required by § 1.201-9 (a) of this title.

2. A new Subpart O is added to Part 590, as follows:

SUBPART O—MAINTENANCE OF MOBILIZATION BASE

Sec.

590.1500 Scope of subpart.

590.1501 Defense Mobilization Order DMO VII-7.

590.1502 Procedures for the integration of current procurement with the Production Allocation Program.

590.1503 DOD Directive 3005.3, December 7, 1954 "Maintenance of the Mobilization Base".

AUTHORITY: §§ 590.1500 to 590.1503 issued under sec. 3012, 70A Stat. 157; 10 U. S. C.

3012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U. S. C. 2301-2314.

§ 590.1500 *Scope of subpart.* This subpart sets forth the policy and procedures relative to the procurement of planned items in the interest of maintaining the mobilization base.

§ 590.1501 *Defense Mobilization Order DMO VII-7.* Defense Mobilization Order DMO VII-7, as amended, contains the following statement of policy with respect to current procurement in maintaining the mobilization base:

a. Procurement agencies shall integrate current procurement with their industrial mobilization plans to the greatest possible extent with the objective of supporting the mobilization base within authorities and funds available.

b. Data assembled on essential mobilization suppliers by the industrial mobilization planning of these agencies shall be used in planning current procurement. The policy of using contractors and facilities essential to the mobilization base is considered to be in the best interest of the Government. Suppliers that are deemed to be part of the mobilization base normally will be invited to participate in appropriate current procurement.

§ 590.1502 *Procedures for the integration of current procurement with the Production Allocation Program.* The following procedures are established to integrate current procurement with the Production Allocation Program. These procedures are applicable to all contracts for supplies in excess of \$100,000. As used in this subpart, a producer becomes a "planned producer," and capacity becomes "allocated" when management has accepted a "Tentative Schedule of Production"—DD Form 405 (Desired Production and Production Allocation Schedule Work Sheet—Production Allocation Program) or DD Form 406 (Tentative Schedule of Production and Request for Allocation—Production Allocation Program) (See step 11, page 31 of the Production Allocation Manual).

(a) When procurement of any planned item is to be accomplished by formal advertising, the contract may be placed without regard to schedules developed under the Production Allocation Program. However, the bidders' list will include all planned producers for the item.

(b) The Armed Services Procurement Planning Officer (ASPPPO), as set forth in the Register of Planned Producers, will be informed when any contract regardless of duration, is placed in a facility for which production planning has been initiated. The ASPPPO will advise all affected claimant agencies that a contract has been placed with the planned producer, including the period of a contract performance, so that they may take, or in the event of M-Day be prepared to take, appropriate action.

(c) As a general rule, a manufacturer engaged in production of a military item at the time an emergency develops will be required to continue to produce that item regardless of whether or not it is in line with his production allocation planning agreement. Therefore, whenever a current contract for an authorized planning item is awarded to a qualified producer who is not a planned

producer, consideration will be given to bringing the qualified contractor into the Production Allocation Program as a planned producer.

§ 590.1503 *DOD Directive 3005.3, December 7, 1954, "Maintenance of the Mobilization Base."* (a) DOD Directive 3005.3 requires that a review be made of proposed procurement of items contained in the Preferential Planning List and that responsibility for such review be maintained at the level of the Procurement Secretaries or their authorized designees. Each chief of a technical service is appointed an authorized designee of the Assistant Secretary of the Army (Logistics) for the purpose of reviewing those items on the Preferential Planning List for which his technical service has been assigned procurement responsibility. Chiefs of technical services may designate general officers within their respective technical services to perform the required review. The review, in furtherance of the policy quoted in § 590.1501 and to integrate current procurement with military mobilization plans, will take into consideration the following factors:

- (1) Maintaining multiple sources of supply;
- (2) Geographic dispersal;
- (3) Avoidance of undue concentration of contracts in a few leading suppliers;
- (4) Multiple awards;
- (5) Preservation of essential skilled labor forces;
- (6) Utilization of existing open industrial capacity;
- (7) Preservation of essential management organization and "know-how";
- (8) Maximum subcontracting; and
- (9) Any other factors relevant to maintaining a sound mobilization base, including the utilization of small business concerns to the maximum extent practicable.

(b) In carrying out negotiations under this program, the authority contained in 10 U. S. C. 2304 (a) (16) shall be used. In this connection comparative price experience shall be used to negotiate the best possible price for the Government.

3. Section 592.106-3 is added, §§ 592.150 to 592.157 are revised, and § 592.158 is revoked, as follows:

§ 592.106-3 *Award Information to Unsuccessful Offerors.* See § 3.106-3 of this title.

§ 592.150 *Statement of contingent or other fees.* The prescribed procedure with respect to obtaining information concerning contingent or other fees paid by suppliers or contractors for soliciting or securing Government contracts including the use of Standard Form 119 (Contractor's Statement of Contingent or Other Fees for Soliciting or Securing or Resulting from Award of Contract) is set forth in Subpart E, Part 1 of this title and Subpart E, Part 590 of this chapter.

§ 592.151 *F. o. b. purchasing policy.* The policy with respect to purchasing f. o. b. origin or destination is set forth in § 1.306 of this title and § 590.306 of this chapter.

§ 592.152 *Qualified products.* Qualified Products Lists may be used in procurement by negotiation in accordance with the policy and procedures set forth in Subpart E, Part 2 of this title and Subpart E, Part 591 of this chapter.

§ 592.153 *Awards; selection of contractors.* The policy of the Department of the Army with respect to the selection of contractors is prescribed in § 1.307 of this title and § 590.307 of this chapter.

§ 592.154 *Submission of information on equal or identical proposals.* The provisions of § 591.406-4 (b) of this chapter relating to procurement by formal advertising, are similarly applicable to procurement by negotiation.

§ 592.155 *Increase or decrease in specified quantity.* Negotiated contracts may contain a clause providing for increases or decreases in the quantities specified in the contracts at the option of the Government. The maximum percentage of such increases or decreases will be subject to negotiation.

§ 592.156 *Disclosure of mistakes after award.* It is the policy of the Department of the Army to conduct negotiations with a view toward complete and final understanding between the contracting parties prior to the execution of a formal contract. The consideration to be given a mistake alleged by a contractor after completion of negotiations and award of the contract will depend on whether the evidence establishes that the claim of mistake is bona fide. Except for such cases where the matter is resolved under Subpart D, Part 606 of this chapter, mistakes alleged by contractors after award will be processed in the same manner as prescribed in § 591.405-3 of this chapter for advertised procurements.

§ 592.157 *Protests involving negotiated procurements.* Protests or objections to actions taken or to be taken by a contracting officer in connection with a negotiated procurement shall be handled in accordance with the requirements and procedure set forth in § 591.451 of this chapter except that:

(a) Copies of proposals and requests for proposals, if any, and an abstract of proposals shall be submitted to higher authority in lieu of the requirement for copies of bids, the invitation for bids and abstract of bids under § 591.451 (f) of this chapter.

(b) The documented case required by § 591.451 (f) of this chapter shall include a copy of the contract, or reference to the number and date thereof.

4. Sections 592.203-2, 592.303, and 592.401 are revised to read as follows:

§ 592.203-2 *Application.* Negotiated purchases or contracts aggregating \$1,000 or less shall be made in accordance with Subpart F, Part 3 of this title and Subpart F, Part 592 of this chapter, except that appropriate forms of negotiated purchase orders and contracts shall be used as applicable. 10 U. S. C. 2304 (a) (3) shall be cited as the authority for negotiation of any contract for property or services involving amounts of \$1,000 or less, to the exclusion of any other authority which might

apply to the procurement, except that purchases or contracts for property or services procured and used outside the United States, its Territories, and its possessions, shall be negotiated pursuant to 10 U. S. C. 2304 (a) (6).

§ 592.303 *Determinations and findings by the Head of a Procuring Activity signing as "a chief officer responsible for procurement."* (a) In addition to the determinations and findings authorized to be made by the Head of a Procuring Activity under § 3.303 of this title, the Head of a Procuring Activity, signing as "a chief officer responsible for procurement" may make the determination required by §§ 3.405-1 and 3.405-2 of this title with respect to the use of a Time and Materials contract, or the Labor Hour contract.

(b) The Head of a Procuring Activity may delegate authority to make the determinations and findings required by §§ 3.403-4, 3.404, 3.405-1 and 3.405-2 of this title, and to the Deputy Head, Assistant or to the Chief of Staff of the Procuring Activity, and to chiefs of principal purchasing offices (§ 590.251-3 of this chapter) and chiefs of field procuring activities. He may also personally select one alternate for each such delegate, provided, however, that such alternate will be empowered to make the required determination only during periods of official absence of the delegate for whom he has been selected as alternate. Neither delegates nor their alternates may redelegate this authority.

(c) Determinations and findings which may be made by the Head of a Procuring Activity in connection with procurement actions effected under the authority of Title II of the First War Powers Act, 1941, 50 U. S. C. App. 611, as amended, are set forth in § 606.403-3 of this chapter. Such authority may not be redelegated below the level of the Head of a Procuring Activity unless specifically authorized by the Assistant Secretary of the Army (Logistics).

§ 592.401 *Type of contracts.* In accordance with the basic policy set forth in § 3.401 of this title, the fixed price type of contract generally shall be used for negotiated contracts; other types of contracts may be used only when the requirements of Subpart D, Part 3 of this title and this part, and § 606.104 of this chapter have been satisfied. All prime cost-reimbursement type contracts, letter contracts, fixed-price contracts providing for the redetermination of price and fixed-price incentive type contracts shall include the clause set forth in § 596.150-7 of this chapter which prohibits cost-plus-a-percentage-of-cost subcontracts.

5. New §§ 596.150-7 and 596.203-51 are added, and § 599.552 (a) is revised, as follows:

§ 596.150-7 *Cost-plus-a-percentage-of-cost subcontracting.* Pursuant to § 3.401 of this title the following clause shall be included in all fixed-price contracts, including letter contracts, which provide for the redetermination of price and fixed price incentive type contracts:

Cost-Plus-a-Percentage-of-Cost Subcontracting.

The Contractor agrees that no subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

§ 596.203-51 Cost-plus-a-percentage-of-cost subcontracting. The clause set forth in § 596.150-7 shall be included in all cost-reimbursement type contracts.

§ 599.552 Accident and disability insurance for extra-hazardous occupations. (a) Insurance for risks of disability or death due to extra-hazardous occupations of contractor employees may be procured under one of the master policies negotiated with the Indemnity Insurance Company of North America. Master Policy No. FD-502 covers research operations, and Master Policy No. FD-508 covers other than research operations. Effective on new and renewal policies dated April 1, 1958 or later, the rate is \$30.00 per year/per person for \$10,000 insurance. Coverage is available in units of \$5,000, \$10,000, \$15,000, and \$20,000. For units of coverage other than \$10,000, the rate of \$30.00 shall be adjusted in the same ratio that the amount of coverage purchased bears to \$10,000. The cost of coverage for less than 1 year is reduced pro rata, subject to a minimum premium of \$5.00. The contractor may insure those employees who are engaged in extra-hazardous operations under a Government contract by contacting the insurance company. (Indemnity Insurance Company of North America, 620 Woodward Building, Washington 25, D. C.)

6. Revise paragraphs (b), (c), (d), (e), (f), and (g) of § 602.450, and add § 602.1706-2, as follows:

§ 602.450 Contractor operated motor vehicles. . . .

(b) When a standby-industrial installation is reactivated and operated by a contractor under a contract, the terms of which require and authorize the furnishing of vehicles by the Government, the technical service concerned shall transfer such vehicles as are on hand at the installation which are determined as suitable for the functions to be performed by the contractor. Vehicles transferred shall be reclassified as contractor vehicles and transferred to the contract account as Government-furnished property. Vehicles which are not authorized under the terms of the contract or are not suitable for use thereunder shall be declared excess to the needs of the installation and returned to appropriate supply channels.

(c) When an industrial installation is placed in a standby status, the owning technical service shall determine the vehicles at the installation which are necessary to its operational activities and which should not be removed or replaced. The disposition of all other vehicles shall be made in the following order: (1) As required by the technical service concerned for use in the maintenance of the installation, (2) as required by the owning technical service for use in the performance of other contracts, (3) returned to appropriate supply channels. Vehicles which have been determined by the technical service concerned as suitable for the purpose of maintaining the

installation in a standby status shall be classified as military vehicles and transferred to the appropriate account. Vehicles which the owning technical service requires for use in the performance of other contracts shall be transferred to such contract accounts if authorized by the terms thereof. All remaining vehicles shall be turned in to appropriate supply channels.

(d) Contractor vehicles shall not be included in the bulk allowances of administrative vehicles. When applicable, request for changes in these allowances caused by compliance with paragraphs (a) and (b) of this section will be made by technical service concerned in accordance with AR 58-5 (Administrative Army Regulations Pertaining to Motor Vehicles Management).

(e) Military vehicles transferred to contractor vehicle classification and contractor-procured vehicles registered by the Department of the Army Motor Vehicle Central Records Office are the responsibility of the technical service administering the contract. The supervision and accomplishment of all functions and obligations assumed by the contractor in connection with the operation, utilization of minimum essential vehicles, maintenance, storage, etc., as well as the protection of the Government's interest with respect to contractor vehicles rests with the Contracting Officer. For the purpose of distinguishing contractor vehicles from vehicles in use by the Department of the Army, the contractor, immediately upon the receipt of a vehicle, either by transfer from the Department of the Army or by procurement in the open market shall immediately remove all Department of the Army insignia or markings and shall identify the contractor vehicle in accordance with AR 746-2300-1 (Administrative Army Regulations Pertaining to Marking of Vehicles).

(f) Contractor-operated vehicles utilized outside the confines of a contractor-operated installation shall bear United States Government license plates. Requests for United States Government license plates will be submitted in accordance with AR 746-2300-1.

(g) Statutory restrictions limiting the use of Government-owned vehicles to official business are equally applicable to contractor vehicles. Information governing the use of such vehicles under Department of the Army control is contained in AR 58-5. Contractor vehicles, including busses of less than 12 passengers, shall not be used to transport employees or any other personnel between their places of residence and employment. In the absence of adequate public transportation facilities, service may be augmented or inaugurated under AR 55-90 (Administrative Army Regulations Pertaining to Transportation), provided the other conditions as set forth therein are satisfied.

§ 602.1706-2 Financial control accounts. In order to conform to the Financial Management Plan of the Department of the Army, quarterly reports of the dollar amounts of property specified in § 30.2 of this title will be secured from Department of the Army con-

tractors. Production equipment valued at less than \$500 but meeting the criteria for plant equipment will be reported as plant equipment. [304.7]

7. Revise Subpart R, Part 602, as follows:

SUBPART R—AUDIT OF INDUSTRIAL RECORDS

Sec.

- 602.1801 Responsibility for audits.
- 602.1802 Reports of audit.
- 602.1803 Records in unsatisfactory condition.

AUTHORITY: §§ 602.1801 to 602.1803 issued under sec. 3012, 70A Stat. 157; 10 U. S. C. 3012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U. S. C. 2301-2314.

§ 602.1801 Responsibility for audits. Government and contractor-maintained records pertaining to Government property in possession of contractors are subject to audit by the United States Army Audit Agency.

§ 602.1802 Reports of audit. (a) Audit findings and recommendations pertaining to the administration of Government property in possession of contractors will be reported in the internal audit report covering the audit of the activity administering the contracts involved. Heads of procuring activities will establish such controls and procedures as are necessary to insure that deficiencies recorded in reports of audit are corrected and that due consideration is given to any recommendation contained in the reports. Deficiencies not corrected as of the next audit of the activity will be reported to the Deputy Chief of Staff for Logistics, Department of the Army, Washington 25, D. C., by the United States Army Audit Agency.

(b) Informal advisory reports of the results of audit of contractor's property records will be furnished the activity from time to time. Such reports may be in the form of separate letter reports or by comments contained in advisory audit reports pertaining to system surveys or to individual contracts. Unless specifically requested, no reply to such report is required. The action taken on such reports will be reviewed by the United States Army Audit Agency, and reported in the activity internal audit report.

§ 602.1803 Records in unsatisfactory condition. (a) If the Government or contractor-maintained records of Government property in possession of contractors are in such condition that the status of Government property cannot be ascertained without undue expenditure of time, a special report will be submitted by the United States Army Audit Agency, through the Deputy Chief of Staff for Logistics, Department of the Army, Washington 25, D. C., to the Head of the Procuring Activity, with an information copy to The Inspector General, Department of the Army, Washington 25, D. C.

(b) Upon receipt of the report, the Head of the Procuring Activity will direct the activity commander to take the necessary corrective action and will maintain a close followup to insure that such action is taken promptly. The Head of the Procuring Activity is responsible for insuring that the Regional

Director, United States Army Audit Agency is notified when corrective action has been taken.

(c) If the circumstances are such as to justify a waiver of accounting requirements, the case will be prepared and submitted in accordance with AR 735-79 (Administrative Army Regulations pertaining to Property Accountability).

8. In § 606.204-1, revise paragraph (c) to read as follows:

§ 606.204-1 *Personal or professional service.* * * *

(c) *Contracts for employment of other than experts or consultants which may involve personal or professional services.* Contracts with individuals or organizations containing any one or more of the following elements shall be submitted, prior to award, to the Head of the Procuring Activity involved for review.

9. Subpart H of Part 606, including §§ 606.801, 606.802, 606.803, 606.804, and 606.805, is revoked.

10. In § 606.1205-4, revise paragraph (c) to read as follows:

§ 606.1205-4 *Contract provision for progress payments.* * * *

(c) All requests involving progress payments at rates exceeding 70 percent of total costs or exceeding 85 percent of direct labor and material costs, if regarded favorably by the Head of a Procuring Activity, or by a general officer, designated by him, shall be forwarded with supporting information through the Chief, Contracts Branch, Office of the Deputy Chief of Staff for Logistics, Headquarters, Department of the Army, to the Comptroller of the Army, in accordance with the provisions of § 82.64 of this title.

[C4 and C5, APP, Jan. 30, and Mar. 28, 1958] (Sec. 3012, 70A Stat. 157; 10 U. S. C. 3012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U. S. C. 2301-2314)

[SEAL]

R. V. LEE,
Major General,
U. S. Army,
Acting The Adjutant General.

[F. R. Doc. 58-3356; Filed, May 5, 1958; 8:45 a. m.]

Chapter XIV—The Renegotiation Board

Subchapter B—Renegotiation Board Regulations Under the 1951 Act

PART 1498—FORMS RELATING TO AGREEMENTS AND ORDERS

VARIATIONS IN FORM OF RENEGOTIATION AGREEMENT

Section 1498.2 (g) *Special provisions relating to pending price revision* is amended by inserting, in the last sentence of the form of clause set forth in subparagraphs (2) and (4), the following:

1. In each case, after "Act," insert "after being reduced by the sum of _____ Dollars representing the taxes measured by income, other than Federal taxes, which are attributable to the portion of the profits of the Contractor which is not excessive."

2. In each case, "after any such additional profits," insert "as so adjusted."

(Sec. 109, 65 Stat. 22; 50 U. S. C. App. 1219)

Dated: May 1, 1958.

THOMAS COGGESHALL,
Chairman,

[F. R. Doc. 58-3379; Filed, May 5, 1958; 8:50 a. m.]

TITLE 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

PART 16—LAND TRANSPORTATION RADIO SERVICES

PART 21—DOMESTIC PUBLIC RADIO SERVICES (OTHER THAN MARITIME MOBILE)

REALLOCATION OF CERTAIN FREQUENCY BANDS; CORRECTION

In the matter of amendment of Parts 2, 4, 7, 8, 9, 10, 11, 12, 16, and 21 of the Commission's rules and regulations to reallocate certain frequency bands above 25 Mc, now designated for exclusive Am-

ateur or other non-Government use, to Government services on a shared or exclusive basis, and conversely to reallocate to non-Government use certain bands now designated for Government use.

The Commission's Memorandum Opinion and Order of April 16, 1958 (PCC 58-379, mimeo no. 57291) in the above entitled matter (published in the FEDERAL REGISTER April 23, 1958) (23 F. R. 2676) is corrected in the following particulars:

1. Amend footnote US104A under amendatory paragraph 2 of Part 2 (§ 2.104 (a) (5)) to read as follows:

US104A Each non-Government station in the fixed service, authorized to operate in the band 890-942 Mc and holding a valid authorization to so operate as of April 16, 1958, may continue to operate in that band for the duration of the term of its authorization in effect as of that date, and shall be protected from harmful interference from the radiopositioning service during such term. Renewals of such authorizations, however, shall be contingent upon the condition that each such fixed station (1) accept any harmful interference that may be experienced from the operation of ISM equipments on 915 Mc, (2) accept any harmful interference that may be experienced from the radiopositioning service, and (3) shall not cause harmful interference to the radiopositioning service.

2. Add the text of footnote¹ under amendatory paragraph 7 of Part 16 (§ 16.402 (d)), immediately following the frequency table, to read as follows:

¹ Use of frequencies in the bands 2450-2500 and 17850-18000 Mc is subject to no protection from interference due to the operation of industrial, scientific, and medical devices on the frequencies 2450 and 18000 Mc.

3. Correct amendatory paragraph 6 of Part 21 to read as follows:

6. In § 21.804 (d), delete the entire line concerning the frequency band 2450-2500 Mc.

Released: May 1, 1958.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 58-3380; Filed, May 5, 1958; 8:50 a. m.]

PROPOSED RULE MAKING

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR (1954) Parts 39, 149, 301]

MONTHLY RETURNS AND PAYMENT OF EMPLOYMENT TAXES AND EXCISE TAXES, AND PROCEDURE AND ADMINISTRATION RELATING TO SEPARATE ACCOUNTING FOR CERTAIN COLLECTED TAXES

NOTICE OF PROPOSED RULE MAKING

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commis-

sioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T: P, Washington 25, D. C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner

within the 30-day period. In such a case, a public hearing will be held and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U. S. C. 7805).

[SEAL] RUSSELL O. HARRINGTON,
Commissioner of Internal Revenue.

Regulations relating to monthly returns and payment of employment taxes and excise taxes; and Regulations on Procedure and Administration amended to conform to amendments made to

chapter 77 of the Internal Revenue Code of 1954 by act of February 11, 1958 (Public Law 85-321), relating to separate accounting for certain collected taxes.

The following regulations relate to monthly returns and payment of employment taxes and excise taxes, and to separate accounting for certain collected taxes pursuant to section 7512 of the Internal Revenue Code of 1954, as added by the Act of February 11, 1958 (Public Law 85-321, 72 Stat. 5).

Regulations on monthly returns and payment of employment taxes (26 CFR (1954) Part 39):

PARAGRAPH 1. The following regulations, relating to monthly returns and payment of certain employment taxes imposed by subtitle C of the Internal Revenue Code of 1954, are hereby prescribed under those administrative provisions of subtitle F of such Code which are applicable to such taxes:

- Sec.
39.1-1 Introduction.
39.1-2 Monthly tax returns.
39.1-3 Payment of tax.
39.1-4 Information returns or statements.
39.1-5 Extensions of time for filing information returns.
39.1-6 Application of regulations.

§ 39.1-1 *Introduction.* (a) The purpose of the regulations in this part is to provide rules for (1) the filing by employers, under certain circumstances, of monthly returns of employment taxes in lieu of quarterly returns, (2) the payment of the taxes required to be reported on such monthly returns, (3) the filing of quarterly information returns disclosing information similar to the information called for in Schedule A of Form 941, Form 941PR, or Form 941VI, and (4) the filing of Forms W-3 or similar statements, together with the district director's copies of Forms W-2, by employers who are required to file such monthly returns.

(b) The terms used in the regulations in this part have the same meaning as when used in the Employment Tax Regulations (Part 31 of this chapter), and as when used in Regulations 120 (26 CFR (1939) Part 406), and Regulations 128 (26 CFR (1939) Part 408), whichever is appropriate, to the extent such Regulations 120 and 128 are not superseded by such Employment Tax Regulations.

§ 39.1-2 *Monthly tax returns—(a) Requirement.* (1) The provisions of this section are applicable in respect of the taxes reportable on Form 941, Form 941PR, or Form 941VI pursuant to § 406.601 of Regulations 120 (26 CFR (1939) 406.601) or § 408.601 of Regulations 128 (26 CFR (1939) 408.601). An employer who is required by such § 406.601 or § 408.601 to make quarterly returns on any such form shall, in lieu of making such quarterly returns, make returns of such taxes in accordance with the regulations in this part if he is so notified in writing by the district director. The district director may so notify any employer (i) who, by reason of notification as provided in § 301.7512-1 of this chapter (Regulations on Procedure and Administration), is required to comply with the provisions of such § 301.7512-1, or (ii) who has failed to

(a) make any such return on Form 941, Form 941PR, or Form 941VI, (b) pay tax reportable on any such form, or (c) deposit any such tax pursuant to regulations relating to section 6302 (c) of the Code, at the time and in the manner prescribed by applicable regulations. Every employer so notified by the district director shall make a return for the calendar month in which the notice is received and for each calendar month thereafter (whether or not wages are paid in any such month) until he has filed a final return or is required to make quarterly returns pursuant to notification as provided in paragraph (b) of this section. However, if the notice provided for in this subparagraph is received after the close of the first month of a calendar quarter, the first return under this section shall be made for the period beginning with the first day of such quarter and ending with the last day of the month in which the notice is received.

(2) Each return required under this section shall be made on the form prescribed for making the return which would otherwise be required of the employer under the provisions of § 406.601 of Regulations 120 (26 CFR (1939) 406.601) or § 408.601 of Regulations 128 (26 CFR (1939) 408.601), except that, if some other form is furnished by the district director for use in lieu of such prescribed form, the return shall be made on such other form.

(3) Each return required under this section shall be filed on or before the fifteenth day following the period for which it is made. No extension of time for filing such return may be granted by the district director.

(b) *Termination of requirement.* The district director, in his discretion, may notify the employer in writing that he shall discontinue the filing of monthly returns under this section. If the employer is so notified, the last month for which a return shall be made under this section is the last month of the calendar quarter in which such notice of discontinuance is received. Thereafter, the employer shall make quarterly returns in accordance with the provisions of § 406.601 of Regulations 120 (26 CFR (1939) 406.601) or § 408.601 of Regulations 128 (26 CFR (1939) 408.601).

§ 39.1-3 *Payment of tax.* (a) The taxes required to be reported on each return required pursuant to § 39.1-2 are due and payable to the district director at the time prescribed in paragraph (a) (3) of § 39.1-2 for filing such return.

(b) The provisions of paragraph (b) of § 406.606 of Regulations 120 (26 CFR (1939) 406.606) and of paragraph (b) of § 408.607 of Regulations 128 (26 CFR (1939) 408.607), relating to deposits of taxes pursuant to section 6302 (c) of the Internal Revenue Code of 1954, do not apply to taxes for the month in which the employer receives notice from the district director that returns are required under § 39.1-2, or for any subsequent month for which such a return is required.

§ 39.1-4 *Information returns or statements—(a) Federal Insurance Contributions Act.* (1) Every employer who is

required under § 39.1-2 to make a return of tax under the Federal Insurance Contributions Act for any period within a calendar quarter shall make an information return for such calendar quarter. The information reported on such return shall include, with respect to each employee to whom the employer pays wages as defined in the Federal Insurance Contributions Act, the account number of the employee, the employee's name, the total amount of such wages paid by the employer to the employee during the calendar quarter, and such other information as may be called for on the form provided for making such return.

(2) Each return required under subparagraph (1) of this paragraph shall be made on Schedule A of Form 941, or the equivalent schedule of Form 941PR or Form 941VI, except that, if some other form or schedule is furnished by the district director for the purpose of making the return required by subparagraph (1) of this paragraph, the return shall be made on such other form or schedule.

(3) Each information return required under this paragraph shall be filed on or before the fifteenth day following the calendar quarter for which it is made, except that, if a tax return under § 39.1-2 is made as a final return for a period ending prior to the last day of a calendar quarter, the information return shall be filed on or before the fifteenth day following the period for which the tax return is filed.

(b) *Income tax withheld from wages.* (1) Every employer who is required under § 39.1-2 to make a return of income tax withheld from wages for a period ending December 31, or for any period for which such return is made as a final return, shall make an information statement for the calendar year which includes such period.

(2) Each information statement required under subparagraph (1) of this paragraph shall be made on Form W-3, except that, if some other form is furnished by the district director for use in lieu of Form W-3, the information statement shall be made on such other forms. The information statement shall be accompanied by the district director's copy of each withholding statement on Form W-2 required to be furnished by the employer with respect to wages paid during the calendar year (as well as such copy of each corrected statement for a prior year).

(3) Each information statement required by this paragraph shall be filed on or before January 31 following the calendar year, except that, if a return under § 39.1-2 is filed as a final return for a period ending prior to December 31, the information statement shall be filed on or before the last day of the month following such period.

§ 39.1-5 *Extensions of time for filing information returns.* The district director may, upon application of the employer, grant an extension of time in which to file any information return required under paragraph (a) of § 39.1-4. Such extension of time shall not extend beyond the last day of the calendar month in which occurs the due date prescribed in paragraph (a) of § 39.1-4 for

filing the information return. Each application for an extension of time for filing an information return shall be made in writing, shall be addressed to the district director with whom the employer will file the return, and shall contain a full recital of the causes for the delay. The application shall be filed with the district director on or before the due date prescribed in paragraph (a) of § 39.1-4 for filing the return.

§ 39.1-6 *Application of regulations.* The regulations in this part supplement and modify provisions of existing regulations relating to returns, deposits, and payments of employment taxes, and shall be applicable after June 30, 1958, notwithstanding any existing regulation to the contrary.

Regulations on monthly returns and payment of excise taxes (26 CFR (1954) Part 149):

PAR. 2. The following regulations, relating to monthly returns and payment of certain excise taxes imposed by subtitle D of the Internal Revenue Code of 1954, are hereby prescribed under those administrative provisions of subtitle F of such Code which are applicable to such taxes:

- Sec.
149.1-1 Introduction.
149.1-2 Monthly tax returns.
149.1-3 Payment of tax.
149.1-4 Application of regulations.

§ 149.1-1 *Introduction.* The purpose of the regulations in this part is to provide rules for (a) the filing, under certain circumstances, of monthly returns of excise taxes in lieu of quarterly returns, and (b) the payment of the taxes required to be reported on such monthly returns.

§ 149.1-2 *Monthly tax returns—(a) Requirement.* (1) The provisions of this section are applicable in respect of the taxes reportable on Form 720 pursuant to § 477.3 (a) of Treasury Decision 6025, approved July 3, 1953 (26 CFR (1939) 1957 Supp., 477.3 (a)). A person who is required by such § 477.3 (a) to make quarterly returns on Form 720 shall, in lieu of making such quarterly returns, make returns of such taxes in accordance with the regulations in this part if he is so notified in writing by the district director. The district director may so notify any person (i) who, by reason of notification as provided in § 301.7512-1 of this chapter (Regulations on Procedure and Administration), is required to comply with the provisions of such § 301.7512-1, or (ii) who has failed to (a) make any such return on Form 720, (b) pay any tax reportable on Form 720, or (c) deposit any such tax pursuant to regulations relating to section 6302 (c) of the Code, at the time and in the manner prescribed by applicable regulations. Every person so notified by the district director shall make a return for the calendar month in which the notice is received and for each calendar month thereafter (whether or not tax liability is incurred in any such month) until he has filed a final return or is required to make quarterly returns pursuant to noti-

fication as provided in paragraph (b) of this section. However, if a person filing returns on a quarterly basis receives the notice provided for in this subparagraph after the close of the first month of a calendar quarter, the first return under this section shall be made for the period beginning with the first day of such quarter and ending with the last day of the month in which the notice is received.

(2) Each return required under this section shall be made on Form 720, except that, if some other form is furnished by the district director for use in lieu of Form 720, the return shall be made on such other form.

(3) Each return required under this section shall be filed on or before the fifteenth day following the period for which it is made. No extension of time for filing such return may be granted by the district director.

(b) *Termination of requirement.* The district director, in his discretion, may notify the person in writing that he shall discontinue the filing of monthly returns under this section. If the person is so notified, the last month for which a return shall be made under this section is the last month of the calendar quarter in which such notice of discontinuance is received. Thereafter, the person shall make quarterly returns in accordance with the provisions of § 477.3 (a) of Treasury Decision 6025 (26 CFR (1939) 1957 Supp., 477.3 (a)).

§ 149.1-3 *Payment of tax.* (a) The taxes required to be reported on each return required pursuant to § 149.1-2 are due and payable to the district director at the time prescribed in paragraph (a) (3) of § 149.1-2 for filing such return.

(b) The provisions of § 477.4 (c) of Treasury Decision 6025 (26 CFR (1939) 1957 Supp., 477.4 (c)), relating to deposits of taxes pursuant to section 6302 (c) of the Internal Revenue Code of 1954, do not apply to taxes for any month, required to be reported on a return made pursuant to § 149.1-2, unless the due date prescribed in such § 477.4 (c) for making the deposit for such month occurs prior to the due date prescribed in paragraph (a) (3) of § 149.1-2 for filing such return.

§ 149.1-4 *Application of regulations.* The regulations in this part supplement and modify provisions of existing regulations relating to returns, deposits, and payments of excise taxes, and shall be applicable after June 30, 1958, notwithstanding any existing regulation to the contrary. However, any notice in effect under the provisions of § 477.3 (b) of Treasury Decision 6025 (26 CFR (1939) 1957 Supp., 477.3 (b)) requiring the filing of a return for the month in which the regulations in this part are published in the FEDERAL REGISTER shall continue in effect as a notice under § 149.1-2 received in the month following the month of such publication.

Regulations on procedure and administration (26 CFR (1954) Part 301):

PAR. 3. The regulations on Procedure and Administration (Part 301) are amended to conform to the amendments

made to chapter 77 of the Internal Revenue Code of 1954 by the Act of February 11, 1958 (Public Law 85-321, 72 Stat. 5), relating to separate accounting for certain collected taxes, by inserting immediately after § 301.7511 the following new sections:

§ 301.7512 *Statutory provisions; separate accounting for certain collected taxes, etc.*

SEC. 7512. *Separate accounting for certain collected taxes, etc.—(a) General rule.* Whenever any person who is required to collect, account for, and pay over any tax imposed by subtitle C or by chapter 33—

(1) At the time and in the manner prescribed by law or regulations (A) fails to collect, truthfully account for, or pay over such tax, or (B) fails to make deposits, payments, or returns of such tax, and

(2) Is notified, by notice delivered in hand to such person, of any such failure,

then all the requirements of subsection (b) shall be complied with. In the case of a corporation, partnership, or trust, notice delivered in hand to an officer, partner or trustee, shall, for purposes of this section, be deemed to be notice delivered in hand to such corporation, partnership, or trust and to all officers, partners, trustees, and employees thereof.

(b) *Requirements.* Any person who is required to collect, account for, and pay over any tax imposed by subtitle C or by chapter 33, if notice has been delivered to such person in accordance with subsection (a), shall collect the taxes imposed by subtitle C or chapter 33 which become collectible after delivery of such notice, shall (not later than the end of the second banking day after any amount of such tax is collected) deposit such amount in a separate account in a bank (as defined in section 581), and shall keep the amount of such taxes in such account until payment over to the United States. Any such account shall be designated as a special fund in trust for the United States, payable to the United States by such person as trustee.

(c) *Relief from further compliance with subsection (b).* Whenever the Secretary or his delegate is satisfied, with respect to any notification made under subsection (a), that all requirements of law and regulations with respect to the taxes imposed by subtitle C or chapter 33, as the case may be, will henceforth be complied with, he may cancel such notification. Such cancellation shall take effect at such time as is specified in the notice of such cancellation.

[Sec. 7512 as added by sec. 1, Act of Feb. 11, 1958 (Pub. Law 85-321, 72 Stat. 5)]

§ 301.7512-1 *Separate accounting for certain collected taxes—(a) Scope.* The provisions of section 7512 and this section apply to—

(1) The following taxes imposed by subtitle C of the Code in respect of wages or compensation paid after February 11, 1958, for pay periods beginning after such date:

(i) The employee tax imposed by section 3101 of chapter 21 (Federal Insurance Contributions Act).

(ii) The employee tax imposed by section 3201 of chapter 22 (Railroad Retirement Tax Act), and

(iii) The income tax required to be withheld on wages by section 3402 of chapter 24 (Collection of Income Tax at Source on Wages); and

(2) The following taxes imposed by chapter 33 of the Code in respect of taxable payments made after February 11, 1958:

(i) The taxes imposed by section 4231 (1), (2), and (3) on amounts paid for admissions,

(ii) The taxes imposed by section 4241 on amounts paid as club dues,

(iii) The taxes imposed by section 4251 on amounts paid for communications services or facilities,

(iv) The taxes imposed by sections 4261 and 4271 on amounts paid for transportation of persons and property, respectively, and

(v) The tax imposed by section 4286 on amounts collected for the use of safe deposit boxes.

(b) **Requirement.** If the district director determines that any person required to collect, account for, and pay over any tax described in paragraph (a) of this section has, at the time and in the manner prescribed by law or regulations, failed to collect, truthfully account for, or pay over any such tax, or make deposits, payments, or returns of any such tax, such person, if notified to do so by the district director in accordance with section 7512 and paragraph (d) of this section, shall—

(1) Collect, at the times and in the manner provided by the law and the regulations in respect of the various taxes described in paragraph (a) of this section, all of the taxes described in such paragraph which become collectible by him after receipt of such notice;

(2) Deposit the taxes so collected, not later than the end of the second banking day after collection, with a bank, as defined in section 581, in a separate account established in accordance with paragraph (c) of this section; and

(3) Keep in such account the taxes so deposited until payment thereof is made to the United States as required by the law and the regulations in respect of such taxes.

The separate accounting requirements contained in subparagraphs (1), (2), and (3) of this paragraph are applicable, in the case of the taxes described in paragraph (a) (1) of this section, to taxes with respect to wages or compensation paid after receipt of the notice from the district director, irrespective of whether such wages or compensation was earned prior to or after receipt of the notice; and, in the case of the taxes described in paragraph (a) (2) of this section, to taxes with respect to taxable payments made after receipt of the notice from the district director, irrespective of whether the transactions with respect to which such payments were made occurred prior to or after receipt of the notice.

(c) **Trust fund account.** The separate bank account referred to in paragraph (b) of this section shall be established under the designation, "Special Fund in Trust for United States, Sec. 7512, I. R. C., payable to Internal Revenue Service on demand by (name of person required to establish account) as trustee". The taxes deposited in such account shall constitute a fund in trust for the United States payable only to the Internal Revenue Service.

(d) **Notice.** Notice to any person requiring his compliance with the provisions of section 7512 (b) and this section shall be in writing and shall be delivered

in hand to such person by an internal revenue officer or employee. In the case of a trade or business carried on other than as a sole proprietorship, such as a corporation, partnership, or trust, notice delivered in hand to an officer, partner, or trustee shall be deemed to be notice delivered in hand to such corporation, partnership, or trust and to all officers, partners, trustees, and employees thereof.

(e) **Cancellation of notice.** The district director may relieve a person to whom notice requiring separate accounting has been given pursuant to section 7512 and this section from further compliance with such separate accounting requirements whenever he is satisfied that such person will comply with all requirements of the Code and the regulations applicable, in respect of the taxes to which the notice relates, in the case of persons not required to comply with the provisions of section 7512 (b). Notice of cancellation of the requirement for separate accounting shall be made in writing and shall take effect at such time as is specified in the notice of cancellation.

(f) **Penalties.** For criminal penalty for failure to comply with any provision of section 7512, see section 7215. For criminal penalties for failure to file return, supply information, or pay tax, for failure to collect or pay over tax, and for attempt to evade or defeat tax, see sections 7203, 7202, and 7201, respectively.

[F. R. Doc. 58-3413; Filed, May 5, 1958; 10:45 a. m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 937]

[Docket No. AO-303]

HANDLING OF NECTARINES GROWN IN CALIFORNIA

NOTICE OF RECOMMENDED DECISION AND OPPORTUNITY TO FILE WRITTEN EXCEPTIONS WITH RESPECT TO PROPOSED MARKETING AGREEMENT AND ORDER

Pursuant to the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of the recommended decision of the Deputy Administrator, Agricultural Marketing Service, United States Department of Agriculture, with respect to a proposed marketing agreement and order regulating the handling of nectarines grown in the State of California, to be effective pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.; 68 Stat. 906, 1047), hereinafter referred to as the "act." Interested parties may file written exceptions to this recommended decision with the Hearing Clerk, United States Department of Agriculture, Room 112, Administration Building, Washington 25, D. C., not later than the close of business of the tenth day after publica-

tion of this recommended decision in the FEDERAL REGISTER. Exceptions should be filed in quadruplicate.

Preliminary statement. The public hearing, on the record of which the proposed marketing agreement and order (hereinafter referred to collectively as the "order") were formulated, was held at Fresno, California, on March 19-21, 1958, pursuant to a notice thereof which was published March 1, 1958, in the FEDERAL REGISTER (23 F. R. 1272). Such notice set forth a proposed marketing agreement and order which had been presented to the Department of Agriculture by the Nectarine Order Promotion Committee, a committee of growers and handlers, with a petition for a hearing thereon.

Material issues. The material issues presented on the record of the hearing are as follows:

(1) The existence of the right to exercise Federal jurisdiction in this instance;

(2) The need for the proposed regulatory program to effectuate the declared purposes of the act;

(3) The definition of the commodity and determination of the production area to be affected by the order;

(4) The identity of the persons and transactions to be regulated; and

(5) The specific terms and provisions of the order including:

(a) Definition of terms used therein which are necessary and incidental to attain the declared objectives of the act, and including all those set forth in the notice of hearing, among which are those applicable to the following additional terms and provisions;

(b) The establishment, maintenance, composition, powers, duties, and operation of a committee which shall be the administrative agency for assisting the secretary in administration of the program;

(c) The establishment of a committee of handlers to advise the administrative agency with respect to matters pertaining to regulation;

(d) The incurring of expenses and the levying of assessments;

(e) Authority to establish marketing research and development projects;

(f) The method for regulating shipments of nectarines grown in the production area;

(g) The provision of exemptions and the establishment of special regulations for nectarines handled to designated market areas within the State of California, or for nectarines handled in certain types of shipments or for certain specified purposes;

(h) The requirement for inspection and certification of nectarines handled;

(i) The establishment of reporting requirements for handlers;

(j) The requirement of compliance with all provisions of the order and with regulations issued pursuant thereto; and

(k) Additional terms and conditions as set forth in §§ 937.62 through 937.71 and published in FEDERAL REGISTER (23 F. R. 1272) on March 1, 1958, which are common to marketing agreements and orders, and certain other terms and conditions as set forth in §§ 937.72 through

937.74, and also published in the said issue of the *FEDERAL REGISTER*, which are common to marketing agreements only.

Findings and conclusions. The findings and conclusions on the aforementioned material issues, all of which are based on the evidence adduced at the hearing and the record thereof, are as follows:

(1) Except for a very limited production in the State of Pennsylvania, the commercial crop of nectarines in the United States is produced within the production area in the State of California. For all practical purposes, such production is shipped in fresh market channels. In 1956, the latest year for which complete data are available, of a total of 488 carloads shipped interstate by rail, 180 carloads were shipped to destinations in the North Atlantic region, 9 to destinations in the South Atlantic, 286 to destinations in the North Central, and 7 in the South Central. A total of 6 carloads was shipped to Canada. In addition, more than 200 carlot equivalents were reported shipped by truck; of these shipments, 178 were distributed in States west of the Mississippi River, 33 east of the Mississippi, and 2 in Canada.

California is an important market for nectarines. Annual unloads for 1956 as reported by the Agricultural Marketing Service show unloads of 401 carload equivalents in Los Angeles, 44 in Oakland, and 48 in San Francisco. However, it is known that a considerable quantity of the nectarines counted in these unloads, particularly from Los Angeles, was later transshipped to destinations outside California. The market area of Los Angeles is a major assembly point for truck shipments of California fruits and vegetables. It is common practice for trucks to assemble mixed loads of fruits, or of fruits and vegetables in the market area of Los Angeles and to transport them to destinations in such States as Arizona, Colorado, Oklahoma, Texas, and others, mainly located west of the Mississippi River. A substantial quantity of nectarines moves out of Los Angeles in these mixed loads. Some quantities of nectarines are shipped from Los Angeles and San Francisco in export.

Any handling of California nectarines in fresh market channels exerts an influence on all other handling of such nectarines in fresh form. Sellers of nectarines, as of other commodities, endeavor to conduct their businesses so as to secure maximum returns for the nectarines they have for sale. The seller of nectarines continually surveys all accessible markets so that he may take advantage of the best possible opportunity to market the fruit. Markets within the State of California provide opportunities to dispose of nectarines the same as markets within other States, or for export; and the sale of a quantity of nectarines in a market within California exerts an equal influence on all other sales of nectarines as a like quantity sold in another market within any other State. If shipments of nectarines to markets outside California were regulated while those within the State were unregulated, growers and handlers would attempt to market within the State all

the lower quality nectarines which could not be shipped under regulation. This would depress the price of nectarines in California markets to a level below that prevailing in markets outside the State. The existence of a lower price level for nectarines marketed within California would tend to depress the prices for nectarines sold in interstate markets. Buyers generally have ready access to market information; and knowledge of lower prices in one market is used in bargaining for nectarines to be shipped into other markets, including markets outside the State of California. As a matter of fact, there is at least one major business concern which controls retail stores in Los Angeles, San Francisco, and other cities in California, as well as in cities along the eastern seaboard. The persons who exercise control in this concern are well aware of the price situation in all markets in which their outlets are located. Moreover, it appears obvious that with substantial quantities of poor quality nectarines burdening markets in the State of California, there would be little opportunity to sell in such markets nectarines meeting the requirements of the regulations established. The larger quantity of nectarines, which would be required to be sold in interstate markets under such circumstances, would likewise tend to lower the level of prices in the interstate markets.

The movement of nectarines by truck in complete loads is increasing. It is now customary to load nectarines on trucks at the packing shed. Often the buyer may not know the final destination of the nectarines at time of purchase. If the market is less favorable in the State of California than elsewhere, the purchaser moves the nectarines to a more favorable market outside the State. This, coupled with the transshipment of nectarines particularly from Los Angeles, would make it virtually impossible to effect compliance with regulations governing interstate shipments if shipments to markets within the State were unregulated. Because of the foregoing, it is concluded that the movement and sale of California nectarines, whether to a market within the State of California or outside thereof, affect prices of all nectarines grown in the production area. Therefore, it is hereby found that all handling of nectarines grown in the production area is either in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce. Hence, except as herein-after otherwise provided, all handling of all nectarines grown in the production area should be subject to the authority of the act and of the order.

(2) Although there has been considerable variation in annual production of California nectarines, the trend has been upward. In the 4-year period 1936-39 average annual production was approximately 11,000 tons, and in the period 1950-54 such production was slightly above 14,000 tons. Since 1954 the trend in production has increased sharply. In 1955 production was 24,000 tons. Production dropped to 19,000 tons in 1956 but in 1957 jumped to 36,000 tons. This recent sharp increase in production is a

reflection of accelerated planting of nectarines beginning in 1950. Increased planting has been stimulated largely by the development of new varieties which have more attractive appearance and better shipping qualities. The acreage of nonbearing nectarine trees increased from 1,045 acres in 1950 to 6,223 in 1956, while bearing acreage increased from 2,716 to 3,633 during the same period. However, there was little or no increase in bearing acreage until 1955, as older orchards of the standard varieties were being pulled out at about the same rate as new plantings were coming into bearing. Bearing acreage in 1957 was estimated at 4,900 acres and the result is seen in the 36,000 tons produced that year. Nectarine trees produce a commercial crop the fourth season after planting. Planting records indicate that a major proportion of the trees now in bearing has not reached the maximum bearing stage. This, coupled with the potential of the more than 6,000 acres not yet in bearing, gives an indication of the problem developing within the industry.

While the season average price of California nectarines has been favorable and such average was 99 percent of parity for the 1957 season as a whole, it seems apparent in view of the prospective large increase in production that prices will be demoralized unless the industry organizes to avert such a development before the full impact of the increased supply is felt.

Moreover, even though from an overall standpoint favorable prices have been received for California nectarines, there were periods during each marketing season when nectarines of particular sizes, qualities, and maturities did not return costs of harvesting and marketing. Prices for nectarines are generally high at the beginning of the season, and growers and handlers are anxious to start shipping in order to take advantage of such prices. Likewise, some of the later maturing varieties develop more desirable size and color than the earlier varieties, and shippers tend to ship such later maturing varieties before they have reached a proper stage of maturity. Under such circumstances, the earliest shipments of each variety often have not been sufficiently mature to give consumers satisfaction. It is believed that consumer dissatisfaction arising from the purchase and consumption of such nectarines curtails demand for nectarines. It is particularly important in view of the prospective increase in production, which as it develops will have to be absorbed by the market, that the nectarines consumers receive are of desirable grade, quality, size, and maturity. Nectarines of sizes which are smaller than the normal size range for the particular variety do not develop the flavor and quality characteristics that are desired by consumers. Shipment of such nectarines depresses the price for all nectarines and contributes to disorderly marketing conditions for the desired sizes and qualities of such fruit. The establishment of regulations with respect to grade, quality, size, and maturity such as are contemplated under the order would provide

a method whereby orderly marketing could be promoted. This would tend to effectuate the declared policy of the act.

The containers used in the shipment of nectarines are mainly those which were developed for and used in the shipment of peaches and plums. These containers are the 4-basket crate, the Los Angeles lug, and the California peach box. There are some indications that these containers are not suitable in all respects for the shipment of all varieties of nectarines. The relatively recent development of a large number of new varieties, many of which develop larger sizes than the older standard varieties, and the increasing production of them has focused the attention of the industry on the need to develop more suitable containers in which to handle this fruit. Some sizes and varieties of nectarines customarily bring better prices than others. Evidence was presented to show that containers of nectarines have been mismarked as to size and variety. In some cases, the number of nectarines in the container corresponded to the count marked on the outside, but the nectarines were of such a size that a larger number would have been necessary to achieve a tight pack in the container. Not only is such improper marking misleading to buyers, but the failure to properly fill the container results in bruising of the fruit in transit. Improper marking, slack packs, and bruised fruit destroy trade confidence in nectarines. Restrictions on the size, capacity, dimensions, markings, and pack of containers used in the marketing of California nectarines would provide a means of enabling buyers and handlers alike to know the exact sizes and quantity of nectarines covered by prices quoted and would tend to increase trade confidence and stability in the marketing of this fruit.

Therefore, it is concluded that the establishment of the order, providing for the regulation of maturity, grade, size, and quality of shipments of California nectarines, and for the establishment of uniform containers to be used for such shipments, is necessary to effectuate the declared purposes of the act. Also, the establishment and maintenance in effect of minimum standards of quality and maturity, when prices are above the parity level, will effectuate such orderly marketing of California nectarines as will be in the public interest. The objective under such order is the tailoring of the supply of nectarines available for sale in fresh market channels to the demand in such outlet so that the fruit thus made available to buyers will be packaged uniformly and be of desirable maturity, grade, size, and quality. Such limitations on shipments of California nectarines should contribute to the establishment of more orderly marketing conditions for such fruit and tend to increase the demand therefor.

(3) The term "nectarines" should be defined in the order to identify the commodity to be regulated thereunder. Such term, as used in the order, refers to all varieties of the fruit classified botanically as *Prunus amygdalus* nectarina which is grown in the production area. Such fruit is commonly called

nectarines, and the term has a specific meaning to all growers, handlers, and others who produce and market the commodity.

The term "variety" should be defined in the order, as hereinafter set forth, since it is proposed, for reasons hereinafter discussed, to provide authority for different regulations for different varieties of nectarines. There are over 60 varieties of nectarines grown commercially in the production area but only about 20 of such varieties are now produced in significant quantities. Also, additional varieties are being propagated. Each of the varieties has characteristics which serve to distinguish it. From a market standpoint, however, they are competitive one with the other. It is necessary, therefore, that all varieties of nectarines, including those that may be developed in the future, be subject to regulations under the order.

A definition of "production area" should be set forth in the order to delineate the area in which the nectarines to be regulated are grown. Nectarine production in California currently is concentrated in the lower San Joaquin Valley. Since this area, by reason of soil and climate, is the best suited of any in the State for nectarine production, it is likely to continue as the major producing area. However, nectarines may be produced in any area of the State where soil and water conditions are such that necessary irrigation can be carried out; but commercial production has not been feasible in some areas. Where high humidity conditions exist, certain disease problems have restricted nectarine production. Also, nectarine trees require a certain number of hours of temperatures below 45 degrees during the winter months to produce a satisfactory crop; and these conditions are not always present in some areas. However, efforts are being made to develop varieties more resistant to disease and varieties with shorter chilling requirements. Improvements are being made in methods of controlling diseases. As these limiting factors are overcome, production of nectarines on a commercial scale will become feasible for all parts of the State. It is concluded, therefore, that the State of California is the smallest regional production area which is practicable, consistently with carrying out the declared policy of the act.

(4) The term "handler" should be defined in the order to identify the persons who are subject to regulation under the program. Since it is the handling of nectarines that is regulated, the term "handler" should apply to all persons who place nectarines in commerce by performing any of the activities within the scope of the term "handle," as hereinafter described. In other words, any person who is responsible for the sale, delivery, consignment, or transportation of nectarines, or who in any other way places nectarines in commerce, should be a handler under the order and be required to carry out such activities in accordance with the order provisions. However, the transportation by a common or contract carrier of nectarines owned by another person should not be

considered as making such carrier a "handler" as, in such instances, the carrier is performing services for hire and is not responsible for the quality or pack of the commodity. Of course, if the carrier is the owner of the nectarines being transported, such carrier would be the handler the same as any other person who may primarily be engaged in another business—such as producer or retailer—but at times is also a handler of nectarines.

The term "handle" should be defined to identify those activities that it is necessary to regulate in order to effectuate the declared policy of the act. Such activities include all phases of selling and transporting which place nectarines in the channels of commerce within the production area or from the production area to any point outside thereof. The handling of nectarines begins at the time the fruit is picked from the trees and includes each of the successive selling and transporting activities until the fruit reaches its final destination. The performance of any one or more of these activities, such as selling, consigning, delivering, or transporting by any person, either directly or through others, should constitute handling. In order to effectuate the declared policy of the act, each such person should be required, except as hereinafter indicated, to limit such handling of nectarines to fruit which conforms to the applicable regulations under the order.

There are some sales of nectarines on-the-tree. Also, after picking, it is usual for nectarines to be sorted, graded, packed, or otherwise prepared for market. Such preparation for market may be performed in the orchard where the fruit is grown or the nectarines may be transported to a packinghouse prior to sorting, grading, and packing. The grower, in such instances, properly relies on the person preparing the nectarines for market to see that the fruit which is thereafter shipped meets all applicable requirements for marketing. Moreover, such activities are, of necessity, preliminary to placing the nectarines in marketing channels. It would not be practical and would unnecessarily complicate the administration of the order to endeavor to require persons engaged in the preparation of nectarines for market to meet the requirements of regulations under the program until after such preparation. Therefore, such activities should be excluded from the definition of "handle." Nectarines may be sold, after packing, at the orchard where grown or at a packinghouse to truckers and others who transport the nectarines from such points to markets within and without the State. The sale or delivery of nectarines to such persons, and the subsequent movement to market, are handling transactions. Any person who engages in any such transaction, whether grower, packinghouse operator, trucker, or others, would therefore be a handler under the order by virtue of such transaction. Each such person should have the responsibility of assuring himself that the nectarines he handles meet all applicable regulations in effect at the

time of handling. Compliance with the regulations which are authorized by the order can readily be determined by the person who is responsible for grading and otherwise preparing the nectarines for market. The primary responsibility for determining whether a particular lot of nectarines conforms to the applicable regulations should rest with the person who places such lot, or causes it to be placed, in the current of commerce. In most cases, such person will be the one who was responsible for grading and preparing the nectarines for market. However, all subsequent handlers also should be responsible for seeing that any regulations applicable to the nectarines are met at the time such persons handle the nectarines. This can readily be ascertained by determining that the nectarines have been inspected and certified as meeting such regulations or by having them inspected. As all handling of nectarines is in interstate or foreign commerce, or directly burdens, obstructs, or affects such commerce, it is concluded that, except as indicated herein and as specifically exempted by the act and order, all sales, consignment, delivery, or transportation of nectarines within the production area or between the production area and any point outside thereof should be subject to the order and any regulations issued pursuant thereto.

(5) (a) Certain terms applying to specific individuals, agencies, legislation, concepts, or things are used throughout the order. These terms should be defined for the purpose of designating specifically their applicability and establishing appropriate limitations on their respective meanings wherever they are used.

The definition of "secretary" should include not only the Secretary of Agriculture of the United States, the official charged by law with the responsibility for programs of this nature, but also, in order to recognize the fact that it is physically impossible for him to perform personally all functions and duties imposed upon him by law, any other officer or employee of the United States Department of Agriculture who is, or who may hereafter be, authorized to act in his stead.

The definition of "act" provides the correct legal citations for the statute pursuant to which the proposed regulatory program is to be operative and avoids the need for referring to these citations.

The definition of "person" follows the definition of that term as set forth in the act, and will insure that it will have the same meaning as it has in the act.

The term "fiscal period" should be defined to set forth the period with respect to which financial records of the Nectarine Administrative Committee—the agency which will administer the program locally—are to be maintained. At the present time, it is desirable to establish a 12-month period ending the last day of February of each year as a fiscal period. Such a period would fix the end of one fiscal period and the beginning of the next at a time of inactivity in the marketing of nectarines. This would

facilitate fixing the term of office of members and alternates to coincide with such period as it would allow sufficient time prior to the time shipments begin for the committee to organize and develop information necessary to its functioning during the ensuing year, and would still insure that a minimum of expense would be incurred during a fiscal period prior to the time assessment income is available to defray such expenses. However, it may develop that for convenience of management, or for other good and sufficient reasons not now apparent, that it would be desirable to establish a fiscal period other than one ending the last day of February; hence, authority should be included in the order to provide for such establishment subject to approval of the Secretary pursuant to recommendations of the committee. Therefore, it is concluded that such term should be defined as hereinafter set forth to provide this flexibility.

A definition of "committee" should be incorporated in the order to identify the administrative agency established under the provisions of the program. Such committee is authorized by the act, and the definition thereof, as hereinafter set forth, is merely to avoid the necessity of repeating its full name each time it is referred to.

The term "pack" is commonly used throughout the nectarine trade and refers to a combination of factors relating to the grade, size, quality, and quantity of nectarines in a particular type and size of container and to the arrangement of the nectarines within that container. For example, "U. S. No. 1, 4 x 5 pack" is considered by the nectarine trade as a specific pack. "U. S. No. 1" describes the grade, "4 x 5 pack," the size, the container (a 4-basket crate), quantity of nectarines, and the arrangement of the nectarines within the container. Under certain circumstances, it may be desirable to regulate shipments of nectarines on the basis of particular grades or sizes, or both, that may be shipped in a specific container or containers and to specify the arrangement of the fruit within the container. Hence, it is concluded that "pack" should be defined as hereinafter set forth.

The term "grower" should be synonymous with "producer" and should be defined to include any person who is engaged, within the production area, in the production of nectarines for market and who has a proprietary interest therein. A definition of the term grower is necessary for such determinations as eligibility to vote for, and to serve as, a member or alternate member on the Nectarine Administrative Committee and for other reasons. The term "grower" should, therefore, be defined as hereinafter set forth.

"District" should be defined as set forth in the order to provide a basis for the nomination and selection of committee members. The districts (i. e., the geographical divisions of the production area as established and as set forth in the order) represent the best basis which could be devised at this time for providing a fair, adequate, and equitable representation on the committee. The provi-

sion for redistricting is desirable because it allows the committee and the Secretary to consider, from time to time, whether the basis for representation on the committee should be improved.

The term "container" should be defined in the order to mean a box, bag, crate, lug, basket, carton, package, or any other type of receptacle used in the packaging, or handling of nectarines. The definition of the term is needed to serve as a basis for differentiation among the various shipping receptacles, in which nectarines are sold or move to market, for which different regulations could be applicable.

The period of harvesting and shipping nectarines is commonly referred to in the industry as the "marketing season." The term "marketing season" is used in various instances in the order, hence it should be defined to insure that its meaning will be the same in each instance. A period beginning May 1 and ending November 30 would be sufficient to cover all fresh shipments of nectarines that are likely to be made in any season. Therefore, it is concluded that such period should be defined in the order as the "marketing season."

(b) It is desirable to establish an agency to administer the order locally under and pursuant to the act, as an aid to the Secretary in carrying out the declared policy of the act. The term "Nectarine Administrative Committee" is a proper identification of the agency and reflects the character thereof. It should be composed of 8 members. The members and alternates should be growers, or employees of growers. Alternate members should be provided to act in the place and stead of the members. A committee of 8 members would be large enough to provide representation to all segments of the industry. Employees of growers should be eligible to serve on the committee. Some growers of nectarines are corporations. These corporations and some of the larger individual growers have employees who are in complete charge of growing and marketing nectarines. Such employees would be qualified from the standpoint of knowledge and personal experience for service on the committee, and it would not be in the interest of the industry to deny them the opportunity to be nominated and to serve on the committee. Three of the members and their respective alternates should represent District 1. Two members and their respective alternates should represent District 2. Districts 3, 4, and 5 should each be represented by one member and an alternate. Such representation recognizes to the extent practicable the relative volume of production in the various districts. Provision to reapportion membership on the committee among districts should be provided so that, if it becomes apparent that through shifts in production, reestablishment of districts, or other reasons, such representation is inappropriate, the Secretary may, upon recommendation of the committee, make such reapportionment as he finds necessary. Each member of the committee and his alternate should be a grower, or an employee of a grower, of nectarines in

the district for which selected. Persons with such qualifications should be intimately acquainted with the problems of producing or marketing nectarines grown in such district and may be expected to present accurately the problems incident to the production or handling of nectarines grown in that district. However, since it is provided that both growers and employees of growers may serve on the committee, the order should provide that a grower, including employees of such grower, shall be eligible to fill but one position on the committee regardless of the number of districts in which he produces nectarines. This is necessary to prevent any grower from securing disproportionate representation.

The term of office of committee members and alternates under the proposed program should be for one year beginning March 1 and ending the last day of February. This will establish an orderly procedure for changing the membership of the committee. The establishment of a term of one year will give growers an opportunity to express their wishes as to those they desire to serve on the committee the following marketing season. The term of office will begin sufficiently in advance of the time shipment of nectarines commences each season to allow adequate time for the committee to organize and start operating. Since it is possible that the new committee members may not be appointed immediately upon expiration of the term of existing members, or that some may fail to qualify immediately, provision should be made for members to continue to serve on the committee until their successors are selected and have qualified. This is necessary to insure continuity of committee operations.

A procedure for the election of nominees for membership on the committee should be prescribed in the order to assist the Secretary in his selection of members and alternate members of the committee. It is recognized that the Secretary is vested with authority under the act to select the committee members; and the nomination of prospective members and alternate members at meetings of the growers in the respective districts is a practical method of providing the Secretary with the names of the persons which the industry desires to serve on the committee.

Nomination meetings for the purpose of electing nominees for members of the committee and their alternates should be held or caused to be held by the committee not later than February 15 of each year. Insofar as possible, the committee should schedule such nomination meetings at such times and places as will result in maximum grower participation. By having such nomination meetings not later than February 15 each year, the committee will be in a position to prepare and submit nomination lists to the Secretary prior to the expiration of the term of office of existing members. The committee should be authorized to adopt procedural rules for the conduct of nomination meetings so that such meetings will be held in an orderly and uniform manner.

As the administrative committee will not be in a position to act until after the selection by the Secretary of its initial members, the order should provide a procedure for the selection of the initial members. The Secretary may appropriately select the initial committee members and alternates from nominations which may be made by growers or appropriate groups thereof, or from other eligible persons; and the order should so provide. Because of the numerous meetings held throughout the production area in preparation for the hearing and the wide acquaintance gained thereby, the Nectarine Order Promulgation Committee representing the proponent group is well qualified to submit initial nominations. The order should provide that such committee may submit such nominations and that, if it deems it advisable, may conduct meetings of the growers in the various districts to secure such nominations. In order that the initial membership of the committee may be selected as soon as possible after the approval of the program, it should be required that such nominations be submitted not later than the effective date thereof.

The order should provide that only growers who are present at the nomination meetings, or who are represented at such meetings by a duly authorized employee, may participate in designating nominees for members and alternates. In regard to such participation, the proposal set forth in the notice of hearing would permit a grower to cast one vote for each position to be filled from the district in which he is a producer. However, concern was expressed at the hearing at the possibility that permitting growers in a district with two or more member positions on the committee to cast a vote for each position to be filled might result in the election of all nominees for the district from the same local area. The feeling was expressed generally that such an occurrence would be undesirable, as growers in other areas within the district would feel that their problems were inadequately represented on the committee. It was generally conceded that steps should be taken to prevent such an occurrence. A proposal was made that the order authorize the committee to establish subdivisions of districts having two or more member positions on the committee if it became desirable to do so, so that a member and alternate would be chosen in each such division. A further proposal was made to limit the vote of each grower to one vote for one member and one vote for one alternate in the district in which he produces nectarines regardless of the number of positions to be filled from the respective district. It was advanced that this would be sufficient to accomplish the desired objective as the growers from any one area would not be permitted to vote for all positions to be filled. Since there was no disagreement as to the desirability of providing a means of assuring equitable representation within districts, it is concluded that the order should provide, as hereinafter set forth, that each eligible grower shall cast but one vote for one member and

one vote for one alternate member in the district in which such grower produces nectarines. For the same reasons set forth concerning the provision of growers' employees serving on the committee, an authorized employee of a grower should be permitted to vote in place of such grower. However, this is not intended to permit any grower business unit (whether an individual, partnership, corporation, or otherwise) more than one vote each for one member and one vote for one alternate in any one particular district.

In order that there will be an administrative agency in existence at all times to administer the order, the Secretary should be authorized to select committee members and alternates without regard to nomination if, for any reason, nominations are not submitted to him in conformance with the procedure prescribed herein. Such selection should, of course, be on the basis of the representation provided in the order so that the composition of the committee will at all times continue as prescribed in the order.

Each person selected by the Secretary as a committee member or alternate should qualify by filing with the Secretary a written acceptance of his willingness and intention to serve in such capacity. This requirement is necessary so that the Secretary will know whether or not the position has been filled. Such acceptance should be filed promptly after the notification of appointment so that the composition of the committee will not be delayed unduly.

Provision should be made as set forth in the order for the filling of any vacancies on the committee, including selection by the Secretary without regard to nominations where such nominations are not made as prescribed, in order to provide for maintaining a full membership on the committee.

The order should provide that an alternate member shall be selected for each member of the committee in order to help insure that each district will have representation at meetings. If any committee member is sick, or otherwise unable to attend a meeting, the alternate member should represent the district at such meeting. Each alternate who is selected should have the same qualifications for membership as the members of the committee and should be able to perform such duties as are assigned to him by the committee. The alternate should be able to take over the duties of the member for the district represented should the member die, be removed from office, or be disqualified. The alternate should serve until a successor to such member has been appointed and has qualified. So that as large a representation as possible will be present at meetings, the order should provide that in the event neither member nor his alternate is able to attend a meeting, such member or the committee may designate any other alternate member from the same district who is not acting as a member to serve in such member's place and stead.

The committee should be given those specific powers which are set forth in section 8c (7) (C) of the act. Such

powers are necessary to enable an administrative agency of this character to function.

The committee's duties, as set forth in the order, are necessary for the discharge of its responsibilities. These duties are generally similar to those specified for administrative agencies under other programs of this character. It is intended that any activities undertaken by the members of the committee will be confined to those which reasonably are necessary for the committee to carry out its responsibilities as prescribed in the program. It should be recognized that these specified duties are not necessarily all inclusive, and that it may develop that there are other duties which the committee may need to perform.

With respect to the provision set forth in § 937.31 (1) providing for redistricting and reapportionment of membership on the committee, such provision is necessary to enable the committee and the Secretary to consider from time to time whether the basis for representation has changed or could be improved and how such improvement should be made. The division of the production area into the districts as set forth in the order is a logical one at the present time from the standpoint of geographical considerations and relative volume of production. However, shifts or other changes which may take place in the future due to increased or decreased production cannot be foreseen. Additional plantings of nectarines are continuing to being made within the production area. New varieties are being developed which may extend planting to new locations within such area. Decreased acreage may result from the pulling out of trees of undesirable varieties. Therefore it is desirable to provide flexibility of operation so that if it should be in the best interests of the administration of the order to change the boundaries of districts, or reapportion the representation on the committee among districts, the committee may so recommend; and the Secretary may take such action.

At least 6 members of the committee, or alternates acting for members, should be present at any meeting of the committee in order for the committee to make any decisions; and decisions of the committee for recommending regulations should require a minimum of 5 concurring votes. All other actions of the committee should require a majority vote of those present, which would insure a minimum of at least 4 concurring votes. These provisions will assure that the actions of the committee will be considered by at least three-fourths of the committee and that recommendations for regulation will be approved by not less than a majority of the entire committee.

In addition to meetings held where the committee is assembled in one place, the committee should be authorized to vote by telephone, telegraph, or other means of communication when a matter to be considered is so routine that it would be unreasonable to call an assembled meeting or when rapid action is necessary because of an emergency. Any votes cast in this fashion should be confirmed promptly in writing to provide a written

record of the votes so cast. In case of an assembled meeting, however, all votes should be cast in person.

It is appropriate that the members and alternates of the committee may receive compensation for the time spent in attending committee meetings. The order authorizes a maximum of \$5.00 per day for this purpose, since the time so spent is usually at financial sacrifice to their personal businesses. While the payment of an amount not to exceed \$5.00 per day will be no means fully compensate such members and alternates for the time spent away from their personal businesses, there are producers in the production area who are willing to represent the industry by serving on the committee even though they do so at some personal sacrifice. The order also should provide for reimbursement of actual out-of-pocket reasonable expenses incurred by members and alternates on committee business, since it would be unfair to require them to bear such expenses incurred in the interest of all nectarine growers and handlers in the production area.

In order for an alternate to adequately represent his district at any committee meeting in place of an absent member, it may be desirable that he should have attended previous meetings along with the member, so as to have a full understanding of all background discussions leading up to action that may be taken at the meeting. Also, an alternate may, in future years, be selected as a member on the committee; and to this extent, attendance at meetings by alternate members could be helpful. Although only committee members, and alternates acting as members, have authority to vote on actions taken by the committee, it is often important for the committee to obtain as wide a representation as practical of producer attitudes toward a proposed regulation or other matter. Therefore, the order should provide that the committee, at its discretion, may request the attendance of alternate members at any or all meetings, notwithstanding the expected or actual presence of the respective members, when a situation so warrants. The same compensation and reimbursement of expenses that are available to members should be made available also to alternate members when they are so requested and attend such meetings as alternates.

Provision should be made in the order whereby each committee will prepare an annual report as soon as practicable after the close of the marketing season. Such report should consist primarily of statistical data such as total shipments by variety, by district, and by size. Such reports would provide committee members, the industry, and the Secretary with a valuable reference information which would be useful from the standpoint of establishment of regulations and the evaluation of varieties and sizes.

(c) Provision should be made in the order for an advisory committee of handlers, to be known as the Shippers' Advisory Committee, the function of which would be to advise the Nectarine Administrative Committee on marketing conditions and to suggest the level of

regulation believed, by the advisory committee, to be necessary to affect an orderly marketing of the crop. Handlers are in daily contact with market receivers and, by reason of their experience and the knowledge gained by such contacts, will be in a position to furnish the administrative committee with invaluable information regarding market conditions and preferences. Growers often are primarily concerned with production problems and may not have the up-to-date information on marketing conditions needed to formulate recommendations for regulations of a variety or group of varieties which would be most beneficial. The provision for an advisory committee will tend to give the balance necessary to the development of economically sound regulation of nectarine shipments.

An advisory committee composed of five handlers, or employees of handlers, should be sufficiently large to provide representation of all handler groups. The members of the advisory committee should be selected by handlers at an annual meeting held by the administrative committee. Selection of the members of the advisory committee by the handlers will tend to provide such handlers with a voice in the operation of the order. However, the administrative committee should be authorized to prescribe such procedures for the election of such members as may be necessary to assure that the advisory committee is reasonably representative of all handlers.

The members of the advisory committee should serve during the marketing season for which they are selected and, since they will be performing a service for the committee, they should be reimbursed for reasonable expenses incurred in their attendance of administrative committee meetings. Employees of handlers, as well as handlers themselves, should be eligible to serve on the committee for the same reasons as given heretofore for making both growers and their employees eligible to serve on the administrative committee. Each member of the advisory committee should have an alternate, having the same qualifications as the member, so that a full committee would be available at all times. Such an alternate would serve in the place of the member whenever the latter was unable, for any reason, to attend meetings of the administrative committee.

(d) The committee should be authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by it for its maintenance and functioning and to enable it to exercise its power and perform its duties pursuant to the order. The funds to cover the expenses of the committee should be obtained through the levying of assessments on handlers. The act specifically authorizes the Secretary to approve the incurring of expenses by the administrative agency established under an order, and requires that each order of this nature contain provisions requiring handlers to pay, pro rata, the necessary expenses.

As his pro rata share of such expenses, each handler who first handles nectar-

lines during a fiscal period should pay assessments to the committee, at a rate fixed by the Secretary, on all nectarines so handled. In this way, each handler's total payments of assessments during a fiscal period would be proportionate to the quantity of nectarines handled by each such handler and assessments would be levied on the same nectarines only once.

The committee should be required to prepare a budget at the beginning of each fiscal period, and as often as may be necessary thereafter, showing estimates of the income and expenditures necessary for the administration of the order during such period. Each such budget should be submitted to the Secretary with an analysis of its components. Such budget and report should also recommend to the Secretary the rate of assessment believed necessary to secure the income required for that period. The committee, because of its knowledge of the prospective crop, will be in a good position to ascertain the necessary assessment rate and make recommendations in this regard.

The rate of assessment to be applicable during a fiscal year should be fixed by the Secretary on the basis of the recommendation of the committee, or from other available information, so as to assure the imposition of such assessments as are consistent with the act. Such rate should be fixed on a fair and equitable unit basis and in an amount designed to secure sufficient funds to cover the expenses which may be incurred during the fiscal period and to accumulate and maintain an operating reserve.

The accumulation and maintenance of an operating reserve are important and accepted functions of any business. Such a reserve is especially necessary to the continued effective and economical operation of the order over a period of years. In most years, shipments of nectarines will not be made in any substantial volume until after July 1, or more than four months after the beginning of the fiscal year. The period prior to the shipping season will be the period of greatest activity as the committee will be surveying the prospective crop and market conditions and developing a marketing policy for the marketing of the crop. In all probability, over one-half of the committee's expenses for the fiscal period generally will be incurred before current assessment income is equal to current expenses. While the committee should be authorized to accept advance payments of assessments from handlers, as one means of financing its early organization, it usually would be necessary unless an operating reserve is established to borrow the funds to operate during the portion of each fiscal period until assessment income is sufficient to meet expenditures. The cost of such borrowing is, of course, an expense of operation and, as such, is borne by handlers. Over the years, therefore, handlers would have to pay expenses under the order which would equal or exceed the cost of establishing and maintaining an operating reserve.

A further saving would accrue to the industry through such a reserve by reason of the manner in which nectarines are marketed. The record of the hearing shows that about 95 percent of all nectarine shipments are handled for the account of the grower—i. e., the handler markets the nectarines of growers and, after deducting the marketing costs, including any assessments under an order, the net proceeds are paid to such growers. Therefore, while the assessments are collected from handlers, the nectarine growers are the ones who actually pay them. If provisions were not made for a reserve, it would be necessary to return to handlers any excess of assessment income over actual expenses during each fiscal period. The cost of determining each handler's pro rata share of such excess and the refunding of such shares to handlers would be an expense chargeable to such fiscal period. In addition, handlers upon receipt of such refunds would have the obligation of returning to each of their growers his pro rata share of the refund. Where the excess of assessment over expenses during a fiscal period is not large, the costs to handlers of returning to growers their proportionate shares of such excess well may exceed the total refund involved.

There are further advantages that would accrue to the industry through the existence of such an operating reserve. Funds would be available to pay a deficit during any season when, either by overestimation of nectarine shipments or an unexpected reduction in the crop by weather hazards, assessment income did not equal expenses. Without the reserve, it would be necessary for handlers to cover the deficit. Where handlers had already made returns to growers, it would be difficult to obtain the additional funds from growers that would be required to meet the increased assessment that would be necessary. Also, it would constitute an extra burden on the industry to increase the assessment rate after some disaster had reduced the crop.

The reserve fund would be available for use in connection with the liquidation of the program in the event the order is terminated, as well as to cover operational costs, such as salaries and other necessary expenses, during any period when the order, or any of its provisions, is inoperative or suspended. It is possible, of course, that the program may be terminated at the end of a fiscal period, or during a year when the production of nectarines is relatively light. In such circumstances, it would be burdensome to handlers to require payment of an assessment to cover the liquidation costs. All handlers receive benefits from the program's operation; and even if a handler ceases handling nectarines before the full time of its operation has expired, it would be appropriate and equitable for such handler to share in the expense of liquidation. Should the order provisions be suspended, it is likely such suspension would occur during a period when nectarine production has been seriously curtailed. It would seem reasonable and proper, therefore, to use the reserve funds to defray the costs of liquidation or any necessary expenses

during a period when particular provisions of the order are inoperative. It is anticipated, of course, that the committee will endeavor to minimize costs in this regard as far as reasonably practicable consistent with the efficient performance of its responsibilities.

Evidence presented at the hearing was to the effect that the handlers of nectarines have been a relatively stable group with few changes in personnel from year to year and that it would be equitable, and far less burdensome, to contribute to the establishment of such an operating reserve during years of normal production rather than to have a high rate of assessment during a season when the crop is materially reduced. Moreover, the growers of nectarines do not change frequently as production of tree crops cannot be shifted rapidly to other commodities. In other words, those who would be making the slightly higher payment that might be required in the years when the reserve fund was being established would benefit when the assessments would be correspondingly reduced.

The proposed reserve fund should be built up slowly over a number of years to avoid imposing a high assessment for this purpose. It was indicated that it would be appropriate, and in keeping with the desires of the industry, to include in the annual budget a specific amount for the reserve fund as well as to use any other excess funds at the end of a fiscal period for this purpose. In order that such reserve funds not be accumulated beyond a reasonable amount, it was proposed that a limit of approximately one fiscal period's expenses be provided. After the reserve is built up to that amount, the assessment rate for following fiscal periods should be fixed so that a deficit may be incurred. Any such deficits should be paid from the reserve until it reaches a level considered too low for the purpose for which it was established, as heretofore described, after which replenishment of the reserve should be undertaken. In this manner, the industry would receive full benefits of the economy of operation which will result from the committee never being in the position of having to incur the cost of borrowing money to finance operations during the pre-harvesting period when assessment income would not cover expenses or of having to make refunds of excess assessments at the end of a fiscal year. Such handling of the assessments and reserve funds is believed to be equitable, in the circumstances, and would effect desirable economies in the administration of the program.

Upon termination of the order, any funds in the reserve which are not used to defray the necessary expenses of liquidation should, to the extent practicable, be returned to the handlers from whom such funds were collected. However, should the order be terminated after many years of operation, and there have been several withdrawals and redeposits in the reserve, the precise equities of handlers may be difficult to ascertain and any requirement that there be a precise accounting of the remaining funds could involve such costs as to nearly equal the monies to be distributed.

Therefore, it would be desirable and necessary to permit the unexpended reserve funds to be disposed of in any manner that the Secretary may determine to be appropriate in such circumstances. In view of the foregoing, it is, therefore, concluded that authority should be provided, as hereinafter set forth, to permit the establishment and use of reserve fund in the manner heretofore described.

Should it develop that assessment income, during a fiscal period, plus any funds in reserve would not, at the previously fixed rate, provide sufficient income to meet expenses, the funds to cover such expenses should be obtained by means of increasing the rate of assessment. Since the act requires that the administrative expenses shall be paid by handlers, this is the only source of income to meet such expenses. The increased assessment rate should be applied to all nectarines handled during the particular fiscal period so that the total payments by each handler during each fiscal period will be proportionate to the total volume of nectarines handled during that period. Likewise, should the provisions of the order be suspended, during any portion or all of a fiscal period, it will be necessary to secure funds to cover expenses during such period unless funds in the reserve are sufficient for such purpose. The committee will incur expenses each fiscal period even though the order may be inoperative during a particular period. To cease incurring any expenses when operations under the order were suspended for short periods would tend to increase rather than decrease total expenses as complete liquidation of the committee's affairs would be necessary to eliminate the payment of any salaries, rent, or utilities. Thereafter, when operations were resumed, it would be necessary to hire and train new personnel and new quarters would have to be obtained and outfitted. Such costs probably would exceed the expenses of maintaining an office and a minimum staff during a period of suspension. Moreover, the committee should be in a position to resume its functions at any time conditions are such that a period of suspension of operations should be terminated. Since expenses will not cease when the order is inoperative for a period, authorization should be provided to require the payment of assessments during such periods.

Funds received by the committee pursuant to the levying of assessments should be used solely for the purposes of the order. The committee should be required, as a matter of good business practice, to maintain books and records clearly reflecting the true, up-to-date operation of its affairs so that its administration could be subject to inspection at any time by the Secretary. The committee should provide the Secretary with periodic reports at appropriate times, such as at the end of each marketing season or at such other times as may be necessary, to enable him to maintain appropriate supervision and control over the committee's activities and operations. Each member and each alternate, as well as employees, agents, or other persons working for or on behalf

of the committee, should be required to account for all receipts and disbursements, funds, property, and records for which they are responsible, should the Secretary at any time ask for such an accounting. Also, whenever any person ceases to be a member or alternate of the committee, he should similarly be required to account for all funds, property, and other committee assets for which he is responsible and to deliver such funds, property and other assets to the committee. Such person should also be required to execute assignments and such other instruments which may be appropriate to vest in the committee the right to all such funds and property and all claims vested in such person. This is a matter of good business practice.

(e) The order should provide, as hereinafter set forth, authority for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of nectarines.

Through the medium of research investigation, the committee should be able to assemble and evaluate data on growing, harvesting, shipping, marketing, and other factors with respect to nectarines which would be of value in determining what regulations should be established, in accordance with the act and the order, for the benefit of the nectarine industry in the production area. Specifically mentioned was research to develop more suitable containers and investigation of handling methods which would tend to maintain quality. Measurement of consumer acceptability of various varieties and work on the development of new markets were indicated as fields needing attention. As the committee becomes more aware of the areas of marketing research and development which may profitably be entered, other projects will undoubtedly be initiated, the scope and character of which may not have been apparent during the course of the hearing.

The committee should be empowered to engage in such projects (except advertising and sales and trade promotion projects which are not permitted by the act), to spend assessment funds for them and to consult and cooperate with appropriate agencies with regard to their establishment. The committee may be limited by the lack of facilities and trained technicians in carrying out any such projects; and it should be authorized to enter into contracts for their development with qualified agencies such as State universities and public and private agencies. Prior to engaging in any such activities, the committee should, of course, submit to the Secretary for his approval the plans for each project. Such plans should set forth the details, including the cost and the objectives to be accomplished, so as to insure, among other things, that the projects are within the purview of the act. The cost of any such project should be included in the budget for approval, and such cost should be defrayed by the use of assessment funds as authorized by the act.

(f) The declared policy of the act is to establish and maintain such orderly

marketing conditions for nectarines, among other commodities, as will tend to establish parity prices therefor, and to establish and maintain such minimum standards of quality and maturity and such grading and inspection requirements as will be in the public interest. The regulation of nectarine shipments by maturity, grade, size, or quality, or any combination thereof, as authorized in the order, provides a means of carrying out such policy.

In order to facilitate the operation of the program, the committee should each year, and prior to recommending regulation of nectarine shipments, prepare and adopt a marketing policy for the ensuing marketing season. A report on such policy should be submitted to the Secretary and made available to growers and handlers of nectarines. The policy so established would serve to inform the Secretary and persons in the industry in advance of the marketing of the crop, of the committee's plans for regulation and the basis therefor. Handlers and growers could then plan their operations in accordance therewith. The policy also would be useful to the committee and the Secretary when specific regulatory actions are being considered, since it would provide basic information necessary to the evaluation of such regulation.

In preparing its marketing policy, the committee should give consideration to the supply and demand factors, hereinafter set forth in the order, affecting marketing conditions for nectarines, since consideration of such factors is essential to the development of an economically sound and practical marketing policy.

The committee should be permitted to revise its marketing policy so as to give appropriate recognition to the latest known conditions when changes in such conditions are sufficiently marked to warrant modification of such policy. Such action is necessary if the marketing policy is to appropriately reflect the probable regulatory proposals of the committee and be of maximum benefit to all persons concerned. A report of each revised marketing policy should be submitted to the Secretary and made available to growers and handlers, together with the data considered by the committee in making the revision.

The committee should, as the local administrative agency under the order, be authorized to recommend such maturity, grade, size, and quality regulations, as well as any other regulations and amendments thereto authorized by the order, as will tend to effectuate the declared policy of the act. It is the key to successful operation of the order that the committee should have such responsibility. The Secretary should look to the committee, as the agency reflecting the thinking of the industry, for its views and recommendations for promoting more orderly marketing conditions to the end that favorable returns would be received by growers for nectarines. The committee should, therefore, have authority to recommend such regulations as are authorized by the order whenever such regulations will, in the judgment

of the committee, tend to promote more orderly marketing conditions and effectuate the declared policy of the act.

When conditions change so that the then current regulations do not appear to the committee to be carrying out the declared policy of the act, the committee should have the authority to recommend the amendment, modification, suspension, or termination of such regulations, as the situation warrants.

The order should authorize the Secretary, on the basis of committee recommendations or other available information, to issue various grade, size, quality, and other appropriate regulations which tend to help growers to obtain favorable returns through establishment of more orderly marketing conditions for nectarines. The Secretary should not be precluded from using such information as he may have, and which may or may not be available to the committee for consideration, in issuing such regulations, or amendments, or modifications thereof, as may be necessary to effectuate the declared policy of the act. Also, when he determines that any regulation does not tend to effectuate such policy, he should have authority to suspend or terminate the regulation, in accordance with the requirements of the act.

The maturity, grade, size, and quality of nectarines which are shipped at any particular time have a direct effect on returns to growers. It is a fact that poorer grades, and less desirable sizes, of nectarines marketed return lower prices than do better grades and sizes. A restriction, under the order, of the shipment of nectarines of low grade should result in more favorable returns for the better grades marketed by eliminating the price depressing effect of poor quality nectarines.

Handlers have shipped in fresh fruit channels immature nectarines and nectarines of less desirable grade and quality and of undesirable size. Such nectarines may be sold only at discounts. The returns from such sales often do not cover the cash costs of harvesting and marketing. The sale of this type of fruit tends to depress the prices for the entire crop, for the particular year, below the level which otherwise would exist if only fruit of suitable maturity, grade, size, and quality, considering the supply and demand conditions for such fruit, is available in the markets.

The demand for particular grades, sizes, and qualities of nectarines varies depending upon the volume of supplies available, the grade, size, and quality composition of such supplies, the availability of competing commodities, and other factors such as the trend and level of consumer income. The supply situation for nectarines is subject to changes from time to time during a particular season depending upon the varietal composition of the nectarines available at any given time as well as the overall volume and quality of the crop. The supply and demand for nectarines during a portion of the season may be such that a quantity of a particular size may be marketed to advantage but to endeavor to market all of the nectarines of such size may reduce the prices received for

such size to less than marketing costs and tend to demoralize the market for all other qualities and sizes of nectarines. Hence, the committee should have the authority to recommend, and the Secretary to fix, regulations which would permit only a portion of a particular size of a variety or varieties of nectarines to be handled during a specified period.

The grade, size, and quality composition of the nectarine crop and the volume of the available supply for the season as a whole and for any particular period during the season are important factors which must be considered in establishing regulations. As the volume of production increases, there doubtless will be a sufficient volume of nectarines harvested in the production area so that the shipment of only the more desirable grades, sizes, and qualities of nectarines could fill market demands. Proper maturity is an important factor determining consumer acceptance. Prices for nectarines in the production area generally start each season at a high level. Haste to take advantage of high prices early in the season has frequently caused the shipment of immature, excessively small, and poor quality nectarines. Also, some of the later varieties develop larger sizes and more color, and these often are shipped before they reach proper maturity at various times during the season presumably to take advantage of better prices. This has resulted in dissatisfaction of consumers; and such consumer dissatisfaction has been reflected in reduced demand. In view of the prospective large increase in the volume of production, it is particularly important that consumers be presented with nectarines which are of desirable maturity, grade, size, and quality. Therefore, the order should provide for the establishment by the Secretary of regulations by maturity, grade, size, quality, or combinations thereof, based upon limitations recommended by the committee or other available information; and such regulations should cover such period or periods as it is determined are warranted by the anticipated supply and demand conditions. In making its recommendations for such regulations, the committee should consider the hereinafter enumerated supply and demand factors. The committee, because of the knowledge and experience of its members, will be well qualified to evaluate such factors and to develop economically sound and practical recommendations for regulations and to advise the Secretary with respect to the supply and demand conditions under which the nectarine crop will be marketed.

As heretofore stated, more than 60 different varieties of nectarines are grown in the production area. However, only about 20 are produced in commercially significant quantities. Each variety has certain characteristics which serve to distinguish it from other varieties. The differences in characteristics, such as shape, size, color, and maturing characteristics, may make it undesirable to apply the same regulations to all varieties, in that under certain circumstances a given regulation may eliminate an excessive proportion of

some varieties from the market. For example, it may be undesirable to apply the same size regulation to a variety which normally grows to smaller sizes as to those which grow to larger sizes. Also, differences in demand exist for some varieties which may make it desirable to recognize such differences in the establishment of regulations. The order should, therefore, provide authority for the issuance of different regulations for different varieties.

Regulations issued should cover the entire production area. Minor variations occur in characteristics of varieties in different locations within districts as well as between districts, but such variations are insufficient to justify the issuance of different regulations. Such variations are as great within districts as between districts and can be largely overcome through proper cultural practices.

The containers used in the shipment of nectarines, as heretofore indicated, are mainly those which were developed for use in the shipping of peaches and plums. These containers are the 4-basket crate, the Los Angeles lug, and the California peach box. Indications are that such containers are not entirely suitable for shipment of all varieties of nectarines. The recent development of new varieties of nectarines which grow to larger sizes than the older standard varieties has focused the attention of the industry on the need to develop more suitable containers in which to handle nectarines, particularly those of the larger sizes. The development and standardization of improved shipping containers would tend to promote orderly marketing of this fruit. Certain detrimental marketing practices with respect to containers and the pack of containers have been followed by handlers in the nectarine industry. Larger sizes in general and some particular varieties of nectarines customarily bring higher prices than others. Containers of nectarines have been marked to indicate that the nectarines therein were of a size larger than was actually in such container. Likewise, containers have been marked to indicate that the nectarines in such containers were of a variety having greater trade acceptance than that actually packed in such containers. The size of nectarines in the Los Angeles lug and the California peach box is usually quoted by count, i. e., the number that it takes to fill the container when packed in accordance with good commercial practice. Good commercial practice requires a tight pack which prevents shifting of the fruit in the container, as such shifting bruises or otherwise damages the fruit. When fruit is marked to show the number of fruit (count) in the container, it takes that number of nectarines of a particular size to make a tight pack. In some cases, the count of nectarines in the container has corresponded to the number marked on the outside, but the nectarines were of such a size that a larger number would have been necessary to achieve a tight pack. Not only is the mismarking of containers misleading to buyers, but the failure to properly fill the containers is

destructive of fruit quality in transit. Such practices destroy trade confidence, reduce demand, and contribute to disorderly marketing conditions. Hence, it is concluded that the order should provide authority for the committee to recommend and the Secretary to fix the size, weight, capacity, dimensions, markings, or pack of the containers which may be used in the packaging or handling of nectarines including authority to regulate shipments of nectarines differently for containers of different capacities on the basis of the particular grades and sizes which may be packed in such containers.

It is not in the public interest to cease regulation when the season average price of nectarines exceeds parity. The committee should be authorized to recommend, and the Secretary to establish, such minimum standards of quality and maturity, in terms of grades or sizes, or both, and such grading and inspection requirements, during any and all periods when the season average price for nectarines may be above parity, as will effectuate such orderly marketing of nectarines and will be in the public interest. Some nectarines do not give consumer satisfaction regardless of the price level. Nectarines which are immature or otherwise of undesirable quality and nectarines of sizes below the normal size range for the particular variety are examples of the type of fruit that is wasteful and does not represent a value to the consumer and should not be shipped.

The shipment of insufficiently mature nectarines or fruit lacking in the quality necessary to assure delivery in satisfactory condition would cause an adverse buyer reaction and would tend to demoralize the market for later shipments of such fruit. Such undesirable fruit has been marketed in the past and undoubtedly would again be marketed in the absence of regulation when the season average price is above parity. Hence, the discontinuance of regulations during seasons when the average price exceeds parity could adversely affect consumers and also result in dissipation of all benefits from the prior operation of the program.

Adverse growing conditions and weather factors may cause some fruit to develop abnormally, or so affect the quality that it would not be in the public interest to permit its shipment. The possible development depends on the conditions in the particular season. It is necessary, therefore, that the provisions of the order contain the flexibility needed to reflect such conditions. Hence, the specific minimum standards of quality and maturity that may be made applicable during a particular year should be established by the Secretary upon the basis of the recommendations of the committee, made after review of the existing conditions that year, or other available information.

(g) The order should provide for the exemption from its provisions of such handling of nectarines which it is not necessary to regulate in order to effectuate the declared purposes of the act. Insofar as practicable, such exempted handling should be stated explicitly in

the order so that handlers will have knowledge of such handling as is not subject to the provisions of the program.

Nectarines which are handled for consumption by charitable institutions, for distribution by relief agencies, or for commercial processing into products have little influence on the level of prices for nectarines sold for fresh consumption in the domestic and export markets. Hence, nectarines handled for such purposes should be exempted from compliance with the regulations issued under the order.

In addition, provision should be made to authorize the committee, with the approval of the Secretary, to exempt the handling of nectarines, in such specified small quantities, or types of shipments, or shipments made for such specified purposes as it is not necessary to regulate in order to effectuate the declared purposes of the act. Such authorization is necessary to enable the exemption of such handling as may be determined necessary to facilitate the conduct of research, and handling which is found not feasible administratively to regulate and which does not materially affect marketing conditions in commercial channels. It would be impractical to set forth these exemptions in detail in the order, because to do so would destroy the flexibility which is necessary to reflect conditions affecting the handling of nectarines in the production area. Therefore, it should be discretionary with the committee, subject to the approval of the Secretary, whether small quantities or types of shipments, or shipments made for specified purposes, should be exempted from regulation, inspection, and assessments, and the period during which such exemptions should be in effect.

At the hearing particular reference was made to the nature of the distribution system in the State of California wherein at least 90 percent of the nectarines distributed intrastate passes through a few of the larger markets in the State. Growers often find that their local retail food store is handling nectarines which have made a round trip to the San Francisco Bay Area or to Los Angeles. Because of this, it was advanced that effective control of all intrastate shipments might be achieved by regulating shipments through the principal metropolitan areas of the State. It is recognized, as hereinbefore noted, that all intrastate handling of nectarines burdens, obstructs, or affects interstate or foreign commerce. However, if effective control of such handling can be achieved through the regulation of shipments to the larger metropolitan areas of the State, it would be in the interest of the nectarine industry to exclude from regulation those shipments that it is unnecessary to regulate to effectuate the purposes of the act. The volume remaining uncontrolled would be small and probably very difficult to inspect and assess. In view of the foregoing, it is concluded that the order should include authority to exempt, as hereinafter set forth, the handling of nectarines to designated areas within the State of California. If handling to certain areas is exempted, and it is later deemed advisable because

of changing conditions or otherwise to regulate such handling, regulations can be established for shipments to such areas.

The allowance of any exemptions may be found to result in avenues of escape from regulation which, if they are found to exist, should be closed. Hence, the committee should be authorized to prescribe, with the approval of the Secretary, such rules, regulations, and safeguards as are necessary to prevent nectarines handled for any of the exempted purposes from entering into regulated channels of trade and thereby tend to defeat the objective of the program. For example, should it be found that a portion of the nectarines moving to commercial processors was being diverted to fresh fruit markets, it may be necessary for the committee to establish procedures to govern the movement of fruit for processing even though such nectarines do not have to comply with grade, size, quality, and other requirements. These procedures might include such requirements as filing applications for authorization to move nectarines in exempted channels and certification by the receiver that such nectarines would be used only for the purpose indicated, if it is found that such requirements are necessary to the effective enforcement of the program regulations.

(h) Provision should be made in the order requiring all nectarines handled, whenever regulations are effective, to be inspected by the Federal or Federal-State Inspection Service and certified as meeting the applicable requirements of such regulation. Inspection and certification of all nectarines subject to regulation are essential to provide evidence of compliance with the regulations in effect. As the handler of a lot of nectarines is responsible for compliance with the regulations and is the only person with prior knowledge that the nectarines are to be handled, it is reasonable and necessary to require handlers to submit each lot of nectarines handled for inspection and certification. Handlers are familiar with the Federal and Federal-State Inspection Services and with the procedures for inspection and certification of fruits in the production area. The evidence of record indicates that only such services are in a position to perform the required inspection and certification. However, the requirement of mandatory inspection poses some problems which require specific handling. As indicated heretofore, there are some small grower-packers who pack their nectarines in the orchard. These so-called shade-tree packers often are located some distance from shipping centers and primarily ship their fruit by truck to markets within the production area. The largest daily volume of this fruit is packed and shipped on Sunday, and inspection has been available only at a high per package cost because of the established minimum fees, and overtime and travel charges. To solve this problem, the committee should be authorized to contract with the inspection services for the costs of inspection and certification required by the order and to collect from the handlers their

pro rata shares of such costs. In this manner, the costs, per package, for the required inspection and certification will be uniform to all handlers and the industry will pay only the actual costs of such services. A representative of the inspection services testified that such an agreement could be satisfactorily arranged. It must be recognized, however, that there will be some instances of small irregular shipments from outlying areas where it will not be practical to have an inspector make the required inspection prior to the handling of the nectarines. The order should, therefore, authorize the committee to issue a waiver of inspection where it would not be feasible, under the circumstances, to inspect a particular shipment of nectarines. Such waivers of inspection should be issued only to the extent necessary. The order should provide that the committee should adopt, subject to the approval of the Secretary, rules and regulations to govern the issuance of such waivers so as to assure that this exception would be carried out on a fair and equitable basis.

Responsibility for having each lot of nectarines inspected, or obtaining an appropriate waiver therefor, should fall on each person who handles nectarines. In this way, not only will the handler be responsible for meeting this requirement but also no subsequent handler may handle such nectarines unless a properly issued inspection certificate or waiver, valid pursuant to the terms of the order and the applicable regulations thereunder, applies to the shipment. Each handler must bear responsibility for determining that each of his shipments of nectarines conforms to all requirements of the order if the regulations are to be of maximum benefit.

After the first handler of a lot of nectarines has had such lot inspected and certified as meeting all applicable regulations, subsequent handlers should, under ordinary circumstances, be permitted to handle such fruit without incurring the expense of another inspection. To facilitate the identification of lots that have been inspected prior to movement to transshipment points, all nectarines inspected at shipping points should be appropriately marked to so indicate unless such nectarines are being loaded for direct shipment to destinations outside the production area. However, some nectarines are placed in refrigerated storage for short periods after being packed and inspected and prior to the final handling. Should such stored fruit be held in storage too long, and deteriorate materially, it would have an adverse effect upon the market equal to any other shipment of nectarines not meeting the regulation requirements. Hence, authority should be provided to establish a period of time prior to shipment during which the required inspection must be performed. This would mean that, even though a particular lot of nectarines has been inspected, if such inspection was performed prior to the period specified, an additional inspection would be required. Such a provision is necessary to prevent the handling of fruit which

has been stored too long and deteriorated.

(i) The committee should have the authority, with the approval of the Secretary, to require that handlers submit to the committee such reports and information as may be needed to perform such agency's functions under the order. Handlers have such necessary information in their possession, and the requirement that they furnish such information to the committee in the form of reports would not constitute an undue burden. Moreover, since handlers are the only persons subject to regulation under the program, they are the only persons who could be required to furnish such information. It is anticipated that most of the information needed by the committee in order to carry out its functions can be obtained from copies of shipping manifests. However, it is difficult to anticipate every type of report or kind of information which the committee may find necessary in the conduct of its operations under the order. Therefore, the committee should have the authority to request, with approval of the Secretary, reports and information, as needed, of the type set forth in the order, and at such times and in such manner as may be necessary.

The Secretary should retain the right to approve, change, or rescind any requests by the committee for information in order to protect handlers from unreasonable requests for reports. Any reports and records submitted for committee use by handlers should remain under protective classification and be disclosed to none other than the Secretary and persons authorized by the Secretary. Under certain circumstances, the release of information with respect to nectarine shipments may be helpful to the committee and the industry generally in planning for operations under the order during the marketing season. However, such reported information may not be released other than on a composite basis, and such release of information should disclose neither the identity of handlers nor their individual operations. This is necessary to prevent the disclosure of information which may affect detrimentally the trade or financial position, or the business operations of individual handlers.

Since it is possible that a question could arise with respect to compliance, handlers should be required to maintain for each fiscal period complete records on their receipts, handling, and disposition of nectarines. Such records should be retained for not less than two succeeding years.

(j) Except as provided in the order, no handler should be permitted to handle nectarines, the handling of which is prohibited pursuant to the order; and no handler should be permitted to handle nectarines except in conformity with the order. If the program is to operate effectively, compliance therewith is essential; and, hence, no handler should be permitted to evade any of its provisions. Any such evasion on the part of even one handler could be demoralizing to the handlers who are in compliance

and would tend, thereby, to impair the effective operation of the program.

(k) The provisions of §§ 937.62 through 937.71, as hereinafter set forth, are similar to those which are included in other marketing agreements and orders now operating. The provisions of §§ 937.72 through 937.74, as hereinafter set forth, also are included in other marketing agreements now operating. All such provisions are incidental to and not inconsistent with the act and are necessary to effectuate the other provisions of the recommended marketing agreement and order and to effectuate the declared policy of the act. Testimony at the hearing supports the inclusion of each such provision.

Those provisions which are applicable to both the proposed marketing agreement and the proposed order, identified by section number and heading, are as follows: § 937.62 *Right of the Secretary*; § 937.63 *Effective time*; § 937.64 *Termination*; § 937.65 *Proceedings after termination*; § 937.66 *Effect of termination or amendment*; § 937.67 *Duration of immunities*; § 937.68 *Agents*; § 937.69 *Deregulation*; § 937.70 *Personal liability*; and § 937.71 *Separability*.

Those provisions which are applicable to the proposed marketing agreement only, identified by section number and heading, are as follows: § 937.72 *Counterparts*; § 937.73 *Additional parties*; and § 937.74 *Order with marketing agreement*.

Rulings on proposed findings and conclusions. April 7, 1958, was set by the Presiding Officer at the hearing as the latest date by which briefs would have to be filed by interested parties with respect to facts presented in evidence at the hearing and the conclusions which should be drawn therefrom. No such brief was filed.

General findings. Upon the basis of the evidence introduced at such hearing, and the record thereof, it is found that:

(1) The marketing agreement and order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The said marketing agreement and order regulate the handling of nectarines grown in the production area in same manner as, and are applicable only to persons in the respective classes of commercial and industrial activity specified in, a proposed marketing agreement and order upon which a hearing has been held;

(3) The said marketing agreement and order are limited in their application to the smallest regional production area which is practicable, consistently with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the act;

(4) There are no differences in the production and marketing of nectarines grown in the production area which make necessary different terms and provisions applicable to different parts of such area;

(5) All handling of nectarines grown in the production area as defined in said

marketing agreement and order is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Recommended marketing agreement and order. The following marketing agreement and order¹ are recommended as the detailed means by which the foregoing conclusions may be carried out:

DEFINITIONS

§ 937.1 **Secretary.** "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ 937.2 **Act.** "Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.; 68 Stat. 906, 1047).

§ 937.3 **Person.** "Person" means an individual, partnership, corporation, association, or any other business unit.

§ 937.4 **Production area.** "Production area" means the State of California.

§ 937.5 **Nectarines.** "Nectarines" means all varieties of *Prunus Amygdalus Nectarina*, commonly called nectarines, grown in the production area.

§ 937.6 **Varieties.** "Varieties" means and includes all classifications or subdivisions of nectarines.

§ 937.7 **Fiscal period.** "Fiscal period" is synonymous with fiscal year and means the 12-month period beginning on March 1 of one year and ending on the last day of February of the following year or such other period as the committee, with the approval of the Secretary, may prescribe.

§ 937.8 **Committee.** "Committee" means the Nectarine Administrative Committee established pursuant to § 937.20.

§ 937.9 **Grower.** "Grower" is synonymous with producer and means any person who produces nectarines for the fresh market and who has a proprietary interest therein.

§ 937.10 **Handler.** "Handler" is synonymous with shipper and means any person (except a common or contract carrier transporting nectarines owned by another person) who handles nectarines.

§ 937.11 **Handle.** "Handle" and ship are synonymous and mean to sell, consign, deliver, or transport nectarines, or to cause nectarines to be sold, consigned, delivered, or transported, between the production area and any point outside thereof, or within the production area: *Provided*, That the term handle shall not include the sale of nectarines on the tree, the transportation within the production area of nectarines from the orchard where grown to a packing facility located within such area for prepa-

ration for market, or the delivery of such nectarines to such packing facility for such preparation.

§ 937.12 **District.** "District" means the applicable one of the following described subdivisions of the production area or such other subdivision as may be prescribed pursuant to § 937.31:

(a) "District 1" shall include the counties of Fresno and Madera.

(b) "District 2" shall include the counties of Tulare and Kings.

(c) "District 3" shall include the counties of Merced and Stanislaus.

(d) "District 4" shall include all of the production area lying south of the northern boundaries of the counties of San Luis Obispo, Kern, and San Bernardino.

(e) "District 5" shall include the balance of the production area.

§ 937.13 **Pack.** "Pack" means the specific arrangement, size, weight, count, or grade of a quantity of nectarines in a particular type and size of container, or any combination thereof.

§ 937.14 **Container.** "Container" means a box, bag, crate, lug, basket, carton, package, or any other type of receptacle used in the packaging or handling of nectarines.

§ 937.15 **Marketing season.** "Marketing season" means the period beginning on May 1 and ending on November 30 of any year.

ADMINISTRATIVE BODY

§ 937.20 **Establishment and membership.** There is hereby established a Nectarine Administrative Committee consisting of eight members, each of whom shall have an alternate who shall have the same qualifications as the member for whom he is an alternate. The members and their alternates shall be growers or employees of growers. Three of the members and their respective alternates shall be producers of nectarines in District 1. Two of the members and their respective alternates shall be producers of nectarines in District 2. One of the members and his alternate shall be producers of nectarines in District 3; one member and his alternate shall be producers of nectarines in District 4; and one member and his alternate shall be producers of nectarines in District 5.

§ 937.21 **Term of office.** The term of office of each member and alternate member of the committee shall be for one year beginning March 1 and ending on the last day of February. Members and alternate members shall serve in such capacities for the portion of the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified.

§ 937.22 **Nomination—(a) Initial members.** Nominations for each of the initial members, together with nominations for the initial alternate members for each position, may be submitted to the Secretary by the committee responsible for promulgation of this part. Such nominations may be made by means of group meetings of the growers concerned in each district. Such nominations, if

made, shall be filed with the Secretary no later than the effective date of this part. In the event nominations for initial members and alternate members of the committee are not filed pursuant to, and within the time specified in, this section, the Secretary may select such initial members and alternate members without regard to nominations, but selections shall be on the basis of the representation provided in § 937.20.

(b) **Successor members.** (1) The committee shall hold or cause to be held, not later than February 15 of each year, a meeting or meetings of the growers in each district for the purpose of designating nominees for successor members and alternate members of the committee. These meetings shall be supervised by the committee which shall prescribe such procedure as shall be reasonable and fair to all persons concerned.

(2) Only growers who are present at such nomination meetings, or represented at such meetings by duly authorized employees, may participate in the nomination and election of nominees for members and their alternates. Each such grower, including employees of such grower, shall be entitled to cast but one vote for one nominee for member and one vote for one nominee for alternate member in the district in which he produces nectarines.

(3) A particular grower, including employees of such grower, shall be eligible for membership as principal or alternate to fill only one position on the committee.

§ 937.23 **Selection.** From the nominations made pursuant to § 937.22, or from other qualified persons, the Secretary shall select the eight members of the committee and an alternate for each such member.

§ 937.24 **Failure to nominate.** If nominations are not made within the time and in the manner prescribed in § 937.22, the Secretary may, without regard to nominations, select the members and alternate members of the committee on the basis of the representation provided for in § 937.20.

§ 937.25 **Acceptance.** Any person selected by the Secretary as a member or as an alternate member of the committee shall qualify by filing a written acceptance with the Secretary promptly after being notified of such selection.

§ 937.26 **Vacancies.** To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor for the unexpired term of such member or alternate member of the committee shall be nominated and selected in the manner specified in §§ 937.22 and 937.23. If the names of nominees to fill any such vacancy are not made available to the Secretary within a reasonable time after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of representation provided for in § 937.20.

¹ The provisions identified with an asterisk (*) apply only to the proposed marketing agreement and not to the proposed order.

§ 937.27 Alternate members. An alternate member of the committee, during the absence of the member for whom he is an alternate, shall act in the place and stead of such member and perform such other duties as assigned. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor for such member is selected and has qualified. In the event both a member of the committee and his alternate are unable to attend a committee meeting, the member or the committee may designate any other alternate member from the same district to serve in such member's place and stead.

§ 937.30 Powers. The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part;

(c) To make and adopt rules and regulations to effectuate the terms and provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 937.31 Duties. The committee shall have, among others, the following duties:

(a) To select a chairman and such other officers as may be necessary, and to define the duties of such officers;

(b) To appoint such employees, agents, and representatives as it may deem necessary, and to determine compensation and to define the duties of each;

(c) To submit to the Secretary as soon as practicable after the beginning of each fiscal period a budget for such fiscal period, including a report in explanation of the items appearing therein and a recommendation as to the rate of assessment for such period;

(d) To keep minutes, books, and records which will reflect all of the acts and transactions of the committee and which shall be subject to examination by the Secretary;

(e) To prepare periodic statements of the financial operations of the committee and to make copies of each such statement available to growers and handlers for examination at the office of the committee;

(f) To cause its books to be audited by a competent public accountant at least once each fiscal year and at such times as the Secretary may request;

(g) To act as intermediary between the Secretary and any grower or handler;

(h) To investigate and assemble data on the growing, handling, and marketing conditions with respect to nectarines;

(i) To submit to the Secretary the same notice of meetings of the committee as is given to its members;

(j) To submit to the Secretary such available information as he may request;

(k) To investigate compliance with the provisions of this part;

(l) With the approval of the Secretary, to redefine the districts into which the production area is divided and to reapportion the representation of any

district on the committee: *Provided*, That any such changes shall reflect, insofar as practicable, shifts in nectarine production within the districts and the production area.

§ 937.32 Procedure. (a) Six members of the committee, or alternates acting for members, shall constitute a quorum and any action of the committee shall require the concurring vote of the majority of those present: *Provided*, That any action of the committee to recommend regulations pursuant to §§ 937.50 to 937.55 shall require at least five concurring votes.

(b) The committee may vote by telephone, telegraph, or other means of communication, and any votes so cast shall be confirmed promptly in writing: *Provided*, That if an assembled meeting is held, all votes shall be cast in person.

§ 937.33 Expenses and compensation. The members of the committee, and alternates when acting as members, shall be reimbursed for expenses necessarily incurred by them in the performance of their duties under this part and may also receive compensation, as determined by the committee, which shall not exceed \$5.00 per day or portion thereof spent in performing such duties: *Provided*, That the committee at its discretion may request the attendance of one or more alternates at any or all meetings, notwithstanding the expected or actual presence of the respective members, and may pay expenses and compensation, as aforesaid.

§ 937.34 Annual report. The committee shall, as soon as is practicable after the close of each marketing season, prepare and mail an annual report to the Secretary and make a copy available to each grower and handler who requests a copy of the report.

§ 937.37 Shippers' Advisory Committee. (a) A Shippers' Advisory Committee, consisting of five members, who shall be handlers, or employees of handlers, selected by the handlers in accordance with the provisions of this section, is hereby established. There shall be an alternate for each member of such committee. An alternate member shall, in the event of such member's absence from a meeting of the committee, act in the place and stead of such member, and, in the event of a vacancy in the office of such member, shall act in the place and stead of such member until a successor for the unexpired term of such member has been selected.

(b) The members and alternate members of the Shippers' Advisory Committee shall be elected by handlers at a general meeting of all handlers and shall serve in such capacities during the marketing season subsequent to such election. Such meeting shall be supervised by the Nectarine Administrative Committee which may prescribe such rules and procedures as may be necessary to assure a membership representative of all shippers.

(c) The Shippers' Advisory Committee may attend each meeting of the Nectarine Administrative Committee held to consider recommendations with re-

spect to regulations of shipments pursuant to the provisions of this subpart. The Shippers' Advisory Committee may advise the committee on matters relating to such recommendations, but shall have no vote with such committee in any matter. Members of the Shippers' Advisory Committee shall serve without compensation but may be reimbursed for expenses necessarily incurred in attendance of meetings of the Nectarine Administrative Committee.

EXPENSES AND ASSESSMENTS

§ 937.40 Expenses. The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the committee for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this part. The funds to cover such expenses shall be acquired in the manner prescribed in § 937.41.

§ 937.41 Assessments. (a) As his pro rata share of the expenses which the Secretary finds are reasonable and likely to be incurred by the committee during a fiscal period, each person who first handles nectarines during such period shall pay to the committee, upon demand, assessments on all nectarines so handled. The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) The Secretary shall fix the rate of assessment to be paid by each such person during a fiscal period in an amount designed to secure sufficient funds to cover the expenses which may be incurred during such period and to accumulate and maintain a reserve fund equal to approximately one fiscal period's expenses. At any time during or after the fiscal period, the Secretary may increase the rate of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expenses which may be incurred. Such increase shall be applied to all nectarines handled during the applicable fiscal period. In order to provide funds for the administration of the provisions of this part during the first part of a fiscal period before sufficient operating income is available from assessments on the current year's shipments, the committee may accept the payment of assessments in advance, and may also borrow money for such purposes.

§ 937.42 Accounting. (a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in subparagraph (2) of this section, it shall be refunded proportionately to the persons from whom it was collected: *Provided*, That any sum paid by a person in excess of his pro rata share of the expenses during any fiscal period may be applied by the committee at the end of such fiscal period to any outstanding obligations due the committee from such person.

(2) The committee, with the approval of the Secretary, may carry over such excess into subsequent fiscal periods as a reserve: *Provided*, That funds already in the reserve do not equal approximately one fiscal period's expenses. Such reserve funds may be used (i) to defray expenses, during any fiscal period, prior to the time assessment income is sufficient to cover such expenses, (ii) to cover deficits incurred during any fiscal year when assessment income is less than expenses, (iii) to defray expenses incurred during any period when any or all provisions of this part are suspended or are inoperative, (iv) to cover necessary expenses of liquidation in the event of termination of this part. Upon such termination, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided*, That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purpose specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of the committee, such member shall account for all receipts and disbursements and deliver all property and funds in his possession to the committee, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in the committee full title to all of the property, funds, and claims vested in such member pursuant to this part.

RESEARCH

§ 937.45 *Marketing research and development.* The committee, with the approval of the Secretary, may establish or provide for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of nectarines. The expense of such projects shall be paid from funds collected pursuant to § 937.41.

REGULATIONS

§ 937.50 *Marketing policy.* Each season prior to making any recommendations pursuant to § 937.51, the committee shall submit to the Secretary a report setting forth its marketing policy for the ensuing marketing season. Such marketing policy report shall contain information relative to:

(1) The estimated total production of nectarines within the production area;

(2) The expected general quality and size of nectarines in the production area and in other areas;

(3) The expected demand conditions for nectarines in different market outlets;

(4) The expected shipments of nectarines produced in the production area and in areas outside the production area;

(5) Supplies of competing commodities;

(6) Trend and level of consumer income;

(7) Other factors having a bearing on the marketing of nectarines; and

(8) The type of regulations expected to be recommended during the marketing season.

§ 937.51 *Recommendations for regulation.* (a) Whenever the committee deems it advisable to regulate the handling of any variety or varieties of nectarines in the manner provided in § 937.52, it shall so recommend to the Secretary.

(b) In arriving at its recommendations for regulation pursuant to paragraph (a) of this section, the committee shall give consideration to current information with respect to the factors affecting the supply and demand for nectarines during the period or periods when it is proposed that such regulation should be made effective. With each such recommendation for regulation, the committee shall submit to the Secretary the data and information on which such recommendation is predicated and such other available information as the Secretary may request.

§ 937.52 *Issuance of regulations.* (a) The Secretary shall regulate, in the manner specified in this section, the handling of nectarines whenever he finds, from the recommendations and information submitted by the committee, or from other available information, that such regulations will tend to effectuate the declared policy of the act. Such regulations may:

(1) Limit, during any period or periods, the shipment of any particular grade, size, quality, maturity, or pack, or any combination thereof, of any variety or varieties of nectarines grown in the production area;

(2) Limit the shipment of nectarines by establishing, in terms of grades, sizes, or both, minimum standards of quality and maturity during any period when season average prices are expected to exceed the parity level;

(3) Fix the size, capacity, weight, dimensions, markings, or pack of the container, or containers, which may be used in the packaging or handling of nectarines.

(b) The committee shall be informed immediately of any such regulation issued by the Secretary, and the committee shall promptly give notice thereof to handlers.

§ 937.53 *Modification, suspension, or termination of regulations.* (a) In the event the committee at any time finds that, by reason of changed conditions, any regulations issued pursuant to § 937.52 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

(b) Whenever the Secretary finds, from the recommendations and information submitted by the committee or from other available information, that a regulation should be modified, suspended, or terminated with respect to any or all shipments of nectarines in order to effectuate the declared policy of

the act, he shall modify, suspend, or terminate such regulation. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the act, he shall suspend or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such modification or suspension.

§ 937.54 *Special purpose shipments.* (a) Except as otherwise provided in this section, any person may, without regard to the provisions of §§ 937.41, 937.52, 937.53, and 937.55, and the regulations issued thereunder, handle nectarines (1) for consumption by charitable institutions; (2) for distribution by relief agencies; or (3) for commercial processing into products.

(b) Upon the basis of recommendations and information submitted by the committee, or from other available information, the Secretary may relieve from any or all requirements, under or established pursuant to §§ 937.41, 937.52, 937.53, or 937.55, the handling of nectarines (1) to designated market areas within the State of California; or (2) for such specified purposes (including shipments to facilitate the conduct of marketing research and development projects established pursuant to § 937.45), or in such minimum quantities or types of shipments, as may be prescribed.

(c) The committee shall, with the approval of the Secretary, prescribe such rules, regulations, and safeguards as it may deem necessary to prevent nectarines handled under the provisions of this section from entering the channels of trade for other than the specific purposes authorized by this section. Such rules, regulations, and safeguards may include the requirements that handlers shall file applications and receive approval from the committee for authorization to handle nectarines pursuant to this section, and that such applications be accompanied by a certification by the intended purchaser or receiver that the nectarines will not be used for any purpose not authorized by this section.

§ 937.55 *Inspection and certification.* (a) Whenever the handling of any variety of nectarines is regulated pursuant to § 937.52 or § 937.53, each handler who handles nectarines shall, prior thereto, cause such nectarines to be inspected by the Federal or Federal-State Inspection Service and certified as meeting the applicable requirements of such regulation: *Provided*, That inspection and certification shall not be required for nectarines which previously have been so inspected and certified if such prior inspection was performed within such period as may be established pursuant to paragraph (b) of this section. Promptly after inspection and certification, each such handler shall submit, or cause to be submitted, to the committee a copy of the certificate of inspection issued with respect to such nectarines. The committee may, with the approval of the Secretary, prescribe rules and regulations waiving the inspection requirements of this section where it is determined that inspection is not available: *Provided*, That all shipments made under such waiver shall comply with all regulations in effect.

(b) The committee may, with the approval of the Secretary, establish a period prior to shipment during which the inspection required by this section must be performed.

(c) The committee may enter into an agreement with the Federal and Federal-State Inspection Services with respect to the costs of the inspection required by paragraph (a) of this section, and may collect from handlers their respective pro rata shares of such costs.

REPORTS

§ 937.60 *Reports.* (a) Each handler shall furnish to the committee, at such times and for such periods as the committee may designate, certified reports covering, to the extent necessary for the committee to perform its functions, each shipment of nectarines as follows:

(1) The name of the shipper and the shipping point;

(2) The car or truck license number (or name of the trucker), and identification of the carrier;

(3) The date and time of departure;

(4) The number and type of containers in the shipment;

(5) The quantities shipped, showing separately the variety, grade, and size of the fruit;

(6) The destination;

(7) Identification of the inspection certificate or waiver pursuant to which the fruit was handled.

(b) Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner and at such times as it may prescribe, such other information as may be necessary to enable the committee to perform its duties under this part.

(c) Each handler shall maintain for at least two succeeding fiscal years, such records of the nectarines received and disposed of by him as may be necessary to verify the reports he submits to the committee pursuant to this section.

(d) All reports and records submitted by handlers pursuant to the provisions of this section shall be received by, and at all times be in custody of, one or more designated employees of the committee. No such employee shall disclose to any person, other than the Secretary upon request therefor, data or information obtained or extracted from such reports and records which might affect the trade position, financial condition, or business operation of the particular handler from whom received: *Provided*, That such data and information may be combined, and made available to any person, in the form of general reports in which the identities of the individual handler furnishing the information is not disclosed and may be revealed to any extent necessary to effect compliance with the provisions of this part and the regulations issued thereunder.

MISCELLANEOUS PROVISIONS

§ 937.61 *Compliance.* Except as provided in this part, no person shall handle nectarines, the shipment of which has been prohibited by the Secretary in accordance with the provisions of this part; and no person shall handle nectarines except in conformity with the

provisions of this part and the regulations issued under this part.

§ 937.62 *Right of the Secretary.* The members of the committee (including successors and alternates), and any agents, employees, or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void, except as to acts done in reliance thereon or in accordance therewith prior to such disapproval by the Secretary.

§ 937.63 *Effective time.* The provisions of this part, and of any amendment thereto, shall become effective at such time as the Secretary may declare above his signature and shall continue in force until terminated in one of the ways specified in § 937.64.

§ 937.64 *Termination.* (a) The Secretary may at any time terminate the provisions of this part by giving at least one day's notice by means of a press release or in any other manner in which he may determine.

(b) The Secretary shall terminate or suspend the operation of any and all of the provisions of this part whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this part whenever he finds by referendum or otherwise that such termination is favored by a majority of the growers: *Provided*, That such majority has, during the current marketing season, produced more than 50 percent of the volume of the nectarines which were produced within the production area for shipment in fresh form. Such termination shall become effective on the first day of March subsequent to the announcement thereof by the Secretary.

(d) The Secretary shall conduct a referendum within the period beginning December 1, 1960, and ending February 1, 1961, to ascertain whether continuance of this part is favored by the growers. The Secretary shall conduct such a referendum within the same 2-month period of every second fiscal period thereafter.

(e) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 937.65 *Proceedings after termination.* (a) Upon the termination of the provisions of this part, the committee shall, for the purpose of liquidating the affairs of the committee, continue as trustee of all the funds and property then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees shall (1) continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to

such persons as the Secretary may direct; and (3) upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person, full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant thereto.

(c) Any person to whom funds, property, or claims have been transferred or delivered, pursuant to this section, shall be subject to the same obligation imposed upon the committee and upon the trustees.

§ 937.66 *Effect of termination or amendment.* Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant to this part, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this part or any regulation issued under this part, or (b) release or extinguish any violation of this part or of any regulation issued under this part, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

§ 937.67 *Duration of immunities.* The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence of this part.

§ 937.68 *Agents.* The Secretary may, by designation in writing, name any officer or employee of the United States, or name any agency or division in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.

§ 937.69 *Derogation.* Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States (a) to exercise any powers granted by the act or otherwise, or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 937.70 *Personal liability.* No member or alternate member of the committee and no employee or agent of the committee shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 937.71 *Separability.* If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 937.72 *Counterparts.* This agreement may be executed in multiple coun-

terparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.*

§ 937.73 *Additional parties.* After the effective date hereof, any handler may become a party to this agreement if a counterpart is executed by him and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary, and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.*

§ 937.74 *Order with marketing agreement.* Each signatory handler hereby requests the Secretary to issue, pursuant to the act, an order providing for the regulating of the handling of nectarines in the same manner as is provided for in this agreement.*

Dated: April 30, 1958.

[SEAL] F. R. BURKE,
Acting Deputy Administrator,
Marketing Services.

[F. R. Doc. 58-3369; Filed, May 5, 1958;
8:48 a. m.]

[7 CFR Part 962]

HANDLING OF FRESH PEACHES GROWN IN GEORGIA

NOTICE OF PROPOSED RULE MAKING

Notice is hereby given that the Department is giving consideration to the following recommendation, submitted by the Industry Committee, established pursuant to the marketing agreement, as amended, and Order No. 62, as amended (7 CFR Part 962), regulating the handling of fresh peaches grown in Georgia, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 602 et seq.).

(a) That during the 1958-59 fiscal period, no handler shall ship to destinations other than in the adjacent markets any peaches which are of a size smaller than 1 3/4 inches in diameter, except that not more than ten (10) percent, by count, of such peaches contained in any bulk lot or any lot of packages may be of a size smaller than 1 3/4 inches in diameter, but not more than fifteen (15) percent, by count, of such peaches in any individual package in any lot may be of a size smaller than 1 3/4 inches in diameter.

(b) When used herein, the terms "fiscal period," "handler," "adjacent markets," "ship," and "peaches," shall have the same meaning as when used in the aforesaid amended marketing agreement and order, and the term "diameter" shall have the same meaning as when used in the United States Standards for Peaches (§§ 51.1210-51.1223 of this title).

All persons who desire to submit written data, views, or arguments for consideration in connection with the fore-

going should do so by forwarding the same to the Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, Room 2077, South Building, Washington 25, D. C., not later than the 10th day after publication of this notice in the FEDERAL REGISTER.

Dated: May 1, 1958.

[SEAL] FLOYD F. HEDLUND,
Acting Director, Fruit and
Vegetable Division, Agricultural
Marketing Service.

[F. R. Doc. 58-3370; Filed, May 5, 1958;
8:48 a. m.]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 2]

[Docket No. 12404]

FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

NOTICE OF PROPOSED RULE MAKING; CORRECTION

The Commission's Notice of Proposed Rule Making of April 16, 1958 (FCC 58-378, mimeo. 57290) in the above entitled matter (published in the FEDERAL REGISTER April 23, 1958) (23 F. R. 2698), is amended in the following particulars:

1. Renumber the columns 1, 2, 3 and 4 instead of 3, 4, 5 and 6.

2. In the band 942-952 Mc, in the column re-numbered as 4, insert an additional class of stations to read:

(f) TV STL (Audio only).

3. In column 1, in the band 2450-2500 Mc, insert the footnote indicator US110.

4. Insert footnote US110 between footnotes US108 and US111, to read as follows:

US110 The Government radiopositioning service is permitted in the band 2450-2500 Mc on the condition that harmful interference is not caused to non-Government services.

5. Correct the text of footnote US16 to read as follows:

US16 The frequency 22235 Mc/s is designated for industrial, scientific and medical purposes; emissions must be confined within the limits of 22110-22360 Mc/s. Radiocommunication services operating within these limits must accept any harmful interference that may be experienced from the operation of industrial, scientific and medical equipment.

Released: May 1, 1958.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 58-3381; Filed, May 5, 1958;
8:50 a. m.]

NOTICES

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Montana 029859]

MONTANA

ORDER PROVIDING FOR OPENING OF PUBLIC LANDS

APRIL 28, 1958.

Pursuant to the authority delegated by the Director's Order No. 541, section 2.5 dated April 21, 1954, the following described lands, which have been conveyed to the United States, are hereby opened to application, selection, and location under the public land laws:

MONTANA PRINCIPAL MERIDIAN

T. 33 N., R. 3 W.
Sec. 4: S 1/2 SW 1/4;
Sec. 8: E 1/2 NE 1/4;
Sec. 9: NW 1/4;
Totaling 320 acres.

The above described public domain lands are rolling to rough in terrain, and are typical fair quality range land for northern Montana. They contain no live water or timber and are covered by a fair stand of native grasses. The lands are best suited for grazing and are not suited for the production of cultivated agricultural crops. The S 1/2 SW 1/4 of Sec. 4 and E 1/2 NE 1/4 of Sec. 8, T. 33 N., R. 3 W., are classified as suitable for exchange to the State of Montana under

Sec. 8 of the Act of June 28, 1934, as amended.

Subject to any existing valid rights and the requirements of applicable law, the lands described are hereby opened to filing of applications, selections and locations in accordance with the following:

A. Beginning on the date of this order, the lands which are classified suitable for exchange to the State of Montana will become subject to application, location, offer or selection under the public land laws. This opening is made in furtherance of a proposed exchange under section 8 of the act of June 28, 1934 (48 Stat. 1272; 43 U. S. C. 315g), as amended, which would exchange vacant public domain lands in Montana for State-owned lands in Glacier Park (M-08353). Since this opening is made in order to assist in a Federal Land Program, insofar as it applies to the lands classified suitable for exchange, it is not subject to the provisions contained in the act of September 24, 1944 (58 Stat. 747; 43 U. S. C. 279-284; 43 CFR 181), as amended, granting certain preference rights to veterans of World War II, the Korean Conflict, and others.

B. The remaining lands included in this order, not classified for exchange to the State (NW 1/4 of Sec. 9), are opened under the following provisions:

(1) No application will be allowed under the homestead, desert land, small

tract, or any other non-mineral public land law, unless the lands have already been classified as valuable or suitable for such application or shall be so classified upon consideration of the application. Any application that is filed will be considered on its merits. The lands will not be subject to occupancy or disposition until they have been classified.

(2) Beginning on the date of this order, the NW¼ of Sec. 9 shall become subject to application, petition, location and selection under the applicable public land laws, subject to valid existing rights, the provisions of existing withdrawals, the requirements of applicable laws, and the 91-day preference right filing period for veterans and others entitled to preference under the act of September 27, 1944 (58 Stat. 747; U. S. C. 279-284), as amended. All applications pursuant to this act, filed on or before June 3, 1958 shall be treated as though simultaneously filed at that time. Applications from qualified veterans between that time and September 2, 1958 will be considered in the order of their receipt. All applications received prior to September 2, 1958 from applicants not entitled to veterans preference, will be treated as though simultaneously filed at that time.

Inquiries concerning these lands shall be addressed to the State Supervisor, Bureau of Land Management, 1245 North 29th Street, Billings, Montana.

R. D. NIELSON,
State Supervisor.

[F. R. Doc. 58-3359; Filed, May 5, 1958;
8:46 a. m.]

National Park Service

[Order 1]

GREAT SMOKY MOUNTAINS NATIONAL PARK;
ADMINISTRATIVE OFFICER

DELEGATION OF AUTHORITY TO EXECUTE AND
APPROVE CERTAIN CONTRACTS

SECTION 1. *The Administrative Officer.* The Administrative Officer may execute and approve contracts not in excess of \$50,000 for supplies, equipment or services in conformity with applicable regulations and statutory authority and subject to availability of appropriations.

(National Park Service Order No. 14 (19 F. R. 8024) and amendments thereto; 39 Stat. 535; 16 U. S. C., 1952 ed., sec. 2. Region One Order No. 3 and amendments)

EDWARD A. HUMMEL,
Superintendent, Great
Smoky Mountains National Park.

[F. R. Doc. 58-3380; Filed, May 5, 1958;
8:46 a. m.]

[Yellowstone National Park Order 3]

ASSISTANT SUPERINTENDENT, ADMINISTRATIVE OFFICER AND SUPPLY OFFICER

DELEGATION OF AUTHORITY TO EXECUTE AND
APPROVE CERTAIN CONTRACTS

MARCH 31, 1958.

SECTION 1. *Assistant Superintendent.* The Assistant Superintendent may execute and approve contracts not in excess

of \$100,000 for construction, supplies, equipment, or services in conformity with applicable regulations and statutory authority and subject to availability of appropriations. This authority may be exercised by the Assistant Superintendent in behalf of any coordinated area.

SEC. 2. *Administrative Officer.* The Administrative Officer may execute and approve contracts not in excess of \$50,000 for supplies, equipment, or services in conformity with applicable regulations and statutory authority and subject to availability of appropriations. This authority may be exercised by the Administrative Officer in behalf of any coordinated area.

SEC. 3. *Supply Officer.* The Supply Officer may execute and approve contracts not in excess of \$25,000 for supplies, equipment, or services in conformity with applicable regulations and statutory authority and subject to availability of appropriations. This authority may be exercised by the Supply Officer in behalf of any coordinated area.

SEC. 4. *Revocation.* This order supercedes Order No. 2 issued November 28, 1956.

(National Park Service Order No. 14; 39 Stat. 535; 16 U. S. C., 1952 ed., Sec. 2. Region Two Order No. 3)

LEMUEL A. GARRISON,
Superintendent,
Yellowstone National Park.

[F. R. Doc. 58-3361; Filed, May 5, 1958;
8:46 a. m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

CLARKSVILLE AUCTION CO. ET AL.

DEPOSITING OF STOCKYARDS

It has been ascertained that the Clarksville Auction Company, Clarksville, Texas, originally posted on April 1, 1957, as being subject to the Packers and Stockyards Act, 1921, as amended (7 U. S. C. 181 et seq.), no longer comes within the definition of a stockyard under the act for the reason that it no longer meets the area requirements, and that the Owen Bros. Stockyards, Texarkana, Texas, originally posted on May 24, 1937, under the name of Owen Bros. Horse & Mule Commission Co., as being subject to said act, no longer comes within the definition of a stockyard under the act for the reason that it is no longer being conducted or operated as a public market. Accordingly, notice is given to the owners thereof and to the public that such livestock markets are no longer subject to the provisions of the act.

Notice or other public procedure has not preceded promulgation of the foregoing rule since it is found that the giving of such notice would prevent the due and timely administration of the Packers and Stockyards Act and would, therefore, be impracticable and contrary to the public interest. There is no legal warrant or justification for not depositing promptly a stockyard which no longer

is within the definition of that term contained in said act.

The foregoing is in the nature of a rule granting an exemption or relieving a restriction and, therefore, may be made effective in less than 30 days after publication in the FEDERAL REGISTER. This notice shall become effective upon publication in the FEDERAL REGISTER.

(42 Stat. 159, as amended and supplemented; 7 U. S. C. 181 et seq.)

Done at Washington, D. C., this 30th day of April 1958.

[SEAL] JOHN C. PIERCE, JR.,
Acting Director,
Livestock Division,
Agricultural Marketing Service.

[F. R. Doc. 58-3386; Filed, May 5, 1958;
8:50 a. m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 12263]

RADIO REGULATIONS OF INTERNATIONAL
TELECOMMUNICATION UNION

FIFTH NOTICE OF INQUIRY; CORRECTION

The Commission's Fifth Notice of Inquiry of April 16, 1958 (FCC 58-380, mimeo no. 57292) in the above entitled matter (published in the FEDERAL REGISTER April 23, 1958) (23 F. R. 2701), is amended to correct paragraph 4 of that Notice to read as follows:

4. Any interested person is invited to file comments with the Commission concerning the proposed changes to Chapter III of the Radio Regulations, which includes the international table of frequency allocations, as set forth in the Appendix, on or before May 15, 1958. In accordance with the provision of § 1.54 of the Commission's rules, an original and fifteen (15) copies of all comments shall be furnished to the Commission.

Released: May 1, 1958.

FEDERAL COMMUNICATIONS

COMMISSION,

[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 58-3382; Filed, May 5, 1958;
8:50 a. m.]

DEPARTMENT OF COMMERCE

Federal Maritime Board

MOORE-McCORMACK LINES, INC., ET AL.

NOTICE OF AGREEMENTS FILED FOR
APPROVAL

Notice is hereby given that the following described agreements have been filed with the Board for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733, 46 U. S. C. 814):

(1) Agreement No. 8272, between Moore-McCormack Lines, Inc. (American Republics Line), and Bull Insular Line, Inc., covers the transportation of general cargo under through bills of lading from Uruguay, Brazil and Argentine to Puerto Rico, with transshipment at New York, Baltimore or Philadelphia. Agreement No. 8272, upon approval, will

supersede and cancel approved Agreement No. 7731, between the same parties in the same trade.

(2) Agreement No. 8287, between Compagnie Maritime Des Chargeurs Reunis and Bull Insular Line, Inc., covers the transportation of cargo under through bills of lading from French Equatorial Africa to Puerto Rico, with transshipment at New York, Baltimore or Philadelphia.

Interested parties may inspect these agreements and obtain copies thereof at the Regulation Office, Federal Maritime Board, Washington, D. C., and may submit, within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to either of the agreements and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: April 30, 1958.

By order of the Federal Maritime Board.

[SEAL] GEO. A. VIEHMANN,
Assistant Secretary.

[F. R. Doc. 58-3358; Filed, May 5, 1958;
8:45 a. m.]

UNITED STATES LINES CO.

NOTICE OF APPLICATION TO CARRY OUTBOUND, PART CARGOES OF GRAIN

Notice is hereby given that United States Lines Company seeks permission to carry outbound, part cargoes of grain on its subsidized vessels on Line B Service, Trade Route Nos. 5, 7 and 9, to ports on Line F Service, Trade Route No. 8, to satisfy the demands of shippers for optional ports of discharge.

Any person, firm or corporation having any interest in such application and desiring a hearing on issues pertinent to section 605 (c) of the Merchant Marine Act, 1936, as amended, 46 U. S. C. 1175, should by close of business on May 19, 1958, notify the Secretary, Federal Maritime Board, in writing (in triplicate) and file petition for leave to intervene in accordance with the Rules of Practice and Procedure of the Federal Maritime Board.

If no request for hearing and petition for leave to intervene is received within the specified time, the application will be processed without a hearing.

Dated: May 1, 1958.

By order of the Federal Maritime Board.

[SEAL] GEO. A. VIEHMANN,
Assistant Secretary.

[F. R. Doc. 58-3376; Filed, May 5, 1958;
8:49 a. m.]

STATES MARINE CORP. ET AL.

NOTICE OF TERMINATION OF BAREBOAT CHARTERS

Notice of annual review of bareboat charters covering the vessels "Simmons Victory," "Omar E. Chapman," "Alma

Victory," "Albion Victory," "Binghamton Victory," and "Oberlin Victory" (Charterers: States Marine Corporation, Boston Shipping Corporation, States Marine Corporation, Prudential Steamship Corporation, States Marine Corporation, and Atlantic Ocean Transport Corporation, respectively) appeared in the FEDERAL REGISTER issue of April 18, 1958 (23 F. R. 2575), in which comments were invited with respect to justification for continuing or discontinuing said charters.

The Federal Maritime Board has determined that conditions do not exist justifying the continuance of the charters beyond a year's period of operation of the vessels named above.

Dated: May 1, 1958.

By Order of the Federal Maritime Board.

[SEAL] GEO. A. VIEHMANN,
Assistant Secretary.

[F. R. Doc. 58-3377; Filed, May 5, 1958;
8:49 a. m.]

NORTHERN PAN-AMERICAN LINE AKTIESELSKAB

NOTICE OF AGREEMENT FILED FOR APPROVAL

Notice is hereby given that the following described agreement has been filed with the Board for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733, 46 U. S. C. 814):

Agreement No. 8257-1, between The Northern Pan-American Line Aktieselskab, Aktieselskabet Sobral, and the carriers comprising the A. P. Moller-Maersk Line joint service, modifies approved Gulf West Africa Line joint service agreement to provide (1) for the appointment of Olvind Lorentzen Inc., New York, as agent for the Gulf West Africa Line in the United States, and for the appointment of A. P. Moller, Copenhagen, as agent for said line in West Africa, including the Azores, Cape Verde Islands, Madeira and Canary Islands, and (2) for a change in the form of signature of the joint service to conference, pooling or other agreements. Under Agreement No. 8257 certain functions are delegated to Olvind Lorentzen, Inc. and A. P. Moller-Maersk Line, to be performed on behalf of the joint service in the United States and West Africa, respectively.

Interested parties may inspect this agreement and obtain copies thereof at the Regulation Office, Federal Maritime Board, Washington, D. C., and may submit, within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreement and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: May 1, 1958.

By order of the Federal Maritime Board.

[SEAL] GEO. A. VIEHMANN,
Assistant Secretary.

[F. R. Doc. 58-3378; Filed, May 5, 1958;
8:49 a. m.]

ATOMIC ENERGY COMMISSION

[Docket No. 50-39]

CURTIS-WRIGHT CORP.

NOTICE OF ISSUANCE OF FACILITY LICENSE

Please take notice that no request for a formal hearing having been filed following the publication of notice of the proposed action in the FEDERAL REGISTER on April 12, 1958, 23 F. R. 2413, the Atomic Energy Commission has issued License No. R-36 authorizing Curtiss-Wright Corporation to possess and operate a one thousand kilowatt research reactor at Quehanna, Pennsylvania.

Dated at Germantown, Md., this 29th day of April 1958.

For the Atomic Energy Commission.

H. L. PRICE,
Director, Division of
Licensing and Regulation.

[F. R. Doc. 58-3355; Filed, May 5, 1958;
8:45 a. m.]

FEDERAL POWER COMMISSION

[Docket No. G-14932]

CABOT CARBON CO.

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGE IN RATE

APRIL 30, 1958.

Cabot Carbon Company (Cabot), on March 31, 1958, tendered for filing a proposed change in its presently effective rate schedule¹ for the sale of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: Notice of Change, dated March 28, 1958.

Purchaser: Natural Gas Pipe Line Company of America.

Rate schedule designation: Supplement No. 4 to Cabot's FPC Gas Rate Schedule No. 22.

Effective date: May 10, 1958 (effective date is the date proposed by Cabot).

In support of the proposed rate increase, Cabot states that the increased price is provided by the contract, that it is just and reasonable and that the pricing arrangement is common in long-term contracts and is beneficial to both buyer and seller in that it provides a low initial price which increases as seller's costs increase and buyer's capital investment is amortized.

The increased rate and charge so proposed has not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed change, and that Supplement No. 4 to Cabot's FPC Gas Rate Schedule No. 22 be

¹ Present rate previously suspended and is in effect subject to refund in Docket No. G-12539.

suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in Supplement No. 4 to Cabot's FPC Gas Rate Schedule No. 22.

(B) Pending such hearing and decision thereon, said supplement be and it is hereby suspended and the use thereof deferred until October 10, 1958, and until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplement hereby suspended, nor the rate schedule sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission (Commissioners Digby and Kline dissenting).

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F. R. Doc. 58-3362; Filed, May 5, 1958;
8:46 a. m.]

[Docket No. G-14933]

MURPHY CORP.

ORDER FOR HEARING AND SUSPENDING
PROPOSED CHANGE IN RATE

APRIL 30, 1958.

Murphy Corporation (Murphy), on March 31, 1958, tendered for filing a proposed change in its presently effective rate schedule for the sale of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: Notice of Change dated March 22, 1958.

Purchaser: El Paso Natural Gas Company. Rate schedule designation: Supplement No. 5 to Murphy's FPC Gas Rate Schedule No. 13.

Effective date: May 1, 1958 (effective date is the date proposed by Murphy).

In support of the proposed rate increase, Murphy cites the favored-nation contract provision.

The increased rate and charge so proposed has not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed

change, and that Supplement No. 5 to Murphy's FPC Gas Rate Schedule No. 13 be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in Supplement No. 5 to Murphy's FPC Gas Rate Schedule No. 13.

(B) Pending such hearing and decision thereon, said supplement be and it is hereby suspended and the use thereof deferred until October 1, 1958, and until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplement hereby suspended, nor the rate schedule sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission (Commissioner Kline dissenting).

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F. R. Doc. 58-3363; Filed, May 5, 1958;
8:46 a. m.]

[Docket No. G-14970]

SHELL OIL CO.

ORDER FOR HEARING AND SUSPENDING
PROPOSED CHANGE IN RATES

APRIL 30, 1958.

Shell Oil Company, (Shell), on April 10, 1958, tendered for filing a proposed change in its presently effective rate schedule for sales of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filings:

Description: (1) Supplemental Agreement, dated March 18, 1958; (2) Supplemental Agreement, dated March 18, 1958; (3) Notice of Change, dated April 7, 1958.

Purchaser: United Gas Pipe Line Company. Rate schedule designation: (1) Supplement No. 9 to Shell's FPC Gas Rate Schedule No. 127; (2) Supplement No. 10 to Shell's FPC Gas Rate Schedule No. 127; (3) Supplement No. 11 to Shell's FPC Gas Rate Schedule No. 127.

Effective date: May 11, 1958 (stated effective date is the first day after expiration of the required thirty days' notice).

In support of the proposed increased rate, Shell states that the increased rate resulted from the renegotiation of its basic contract with the buyer, United, and that the proposed increase constituted one of the chief inducements for

*Renegotiation of increase of base rate to 13.75 cents per Mcf.

extending the term of the basic contract for approximately 19 years. Shell also states that the proposed rate and other provisions are identical to those under which an intrastate sale is being made to the same buyer, United, by another producer in the same field.

The increased rate and charge so proposed has not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed change, and that Supplement Nos. 9, 10 and 11 to Shell's FPC Gas Rate Schedule No. 127 be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in Supplement Nos. 9, 10 and 11 to Shell's FPC Gas Rate Schedule No. 127.

(B) Pending such hearing and decision thereon, said supplements be and they are each hereby suspended and the use thereof deferred until October 11, 1958, and until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplements hereby suspended, nor the rate schedule sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the periods of suspension have expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission.

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F. R. Doc. 58-3364; Filed, May 5, 1958;
8:47 a. m.]

[Docket No. G-14971]

HOLLAND-AMERICAN PETROLEUM
CORP. ET AL.

ORDER FOR HEARING AND SUSPENDING
PROPOSED CHANGES IN RATES

April 30, 1958.

Holland-American Petroleum Corporation (Operator) et al. (Holland) on April 10, 1958, tendered for filing proposed changes in its presently effective rate schedules for sales of natural gas subject to the jurisdiction of the Commission. The proposed changes, which constitute increased rates and charges, are contained in the following designated filings:

Description: Notices of Change, dated April 3, 1958.

Purchaser: Texas Eastern Transmission Corporation.

Rate schedule designation: (1) Supplement No. 7 to Holland's FPC Gas Rate Schedule No. 2; (2) Supplement No. 7 to Holland's FPC Gas Rate Schedule No. 3; (3) Supplement No. 7 to Holland's FPC Gas Rate Schedule No. 4; (4) Supplement No. 5 to Holland's FPC Gas Rate Schedule No. 10.

Effective date: May 11, 1958 (effective date is the first day after expiration of the required thirty days notice).

In support of the proposed increased rates, Holland-American states that each of the increased rates resulted from a redetermination in accordance with the basic contract effective February 5, 1958, and requests that the increased rates be permitted to take effect upon that date. It also cites higher rates to other buyers in the area. Such cited higher rates, however, are not increased rates but are for initial services.

The increased rates and charges so proposed have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed changes, and that Supplement No. 7 to Holland's FPC Gas Rate Schedule No. 2, Supplement No. 7 to Holland's FPC Gas Rate Schedule No. 3, Supplement No. 7 to Holland's FPC Gas Rate Schedule No. 4 and Supplement No. 5 to Holland's FPC Gas Rate Schedule No. 10 be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rates and charges contained in Supplement No. 7 to Holland's FPC Gas Rate Schedule No. 2, Supplement No. 7 to Holland's FPC Gas Rate Schedule No. 3, Supplement No. 7 to Holland's FPC Gas Rate Schedule No. 4 and Supplement No. 5 to Holland's FPC Gas Rate Schedule No. 10.

(B) Pending such hearing and decision thereon, said supplements be and they are each hereby suspended and the use thereof deferred until October 11, 1958, and until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplements hereby suspended, nor the rate schedules sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the periods of suspension have expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice

and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission.

[SEAL] JOSEPH H. GUTHRIE,
Secretary.

[F. R. Doc. 58-3365; Filed, May 5, 1958;
8:47 a. m.]

[Docket No. G-14972]

T. C. HUDDLE ET AL.

ORDER FOR HEARING AND SUSPENDING
PROPOSED CHANGE IN RATES

APRIL 30, 1958.

T. C. Huddle (Operator) et al. (Huddle), on April 10, 1958, tendered for filing a proposed change in his presently effective rate schedule for sales of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: Notice of Change, dated April 3, 1958.

Purchaser: Texas Eastern Transmission Corporation.

Rate schedule designation: Supplement No. 9 to Huddle's FPC Gas Rate Schedule No. 2.

Effective date: May 11, 1958 (effective date is the first day after expiration of the required thirty days' notice).

In support of the proposed increased rate, Huddle states that the increased rate resulted from a price redetermination in accordance with the basic contract effective February 5, 1958, and requests that the increased rate be permitted to take effect upon that date. It also cites higher rates to other buyers in the area. Such cited higher rates, however, are not increased rates but are rates for initial services.

The increased rate and charge so proposed has not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed change, and that Supplement No. 9 to Huddle's FPC Gas Rate Schedule No. 2 be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in Supplement No. 9 to Huddle's FPC Gas Rate Schedule No. 2.

(B) Pending such hearing and decision thereon, said supplement be and it is hereby suspended and the use thereof deferred until October 11, 1958, and until

such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplement hereby suspended, nor the rate schedule sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission.

[SEAL] JOSEPH H. GUTHRIE,
Secretary.

[F. R. Doc. 58-3366; Filed, May 5, 1958;
8:47 a. m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 811-794]

DEMPSTER INVESTMENT CO.

NOTICE OF APPLICATION FOR ORDER DECLARING THAT COMPANY HAS CEASED TO BE AN INVESTMENT COMPANY

APRIL 29, 1958.

Notice is hereby given that Dempster Investment Company ("Applicant"), an Illinois corporation and a closed-end, diversified investment company registered as such under the Investment Company Act of 1940 ("act"), has filed an application and amendments thereto pursuant to section 8 (f) of the act for an order declaring that Applicant has ceased to be an investment company under the act, by virtue of the provisions of section 3 (c) (1) of the act.

Applicant, formerly named Sentinel Radio Corporation, was organized on March 21, 1931. Subsequent to the sale as of December 31, 1955, of all its assets Applicant's funds were invested in short term U. S. Treasury Bills.

At the close of business December 4, 1957, Applicant had outstanding a total of 178,493 common shares held by 175 shareholders. On December 23, 1957, Applicant filed its Notification of Registration as an investment company pursuant to section 8 (a) of the act.

On January 3, 1958, Applicant mailed to all of its shareholders, an Invitation to Tender Common Shares for purchase by Applicant at a price of \$8.91 per share, its approximate net asset value, and Applicant undertook therein to purchase all Common Shares properly tendered to it in accordance with said Invitation and delivered to City National Bank and Trust Company of Chicago, its Transfer Agent, on or prior to 5:00 o'clock p. m., central standard time, March 31, 1958. As a result of said Invitation to Tender Common Shares, the outstanding shares of Applicant have been reduced to 149,525 shares, which Applicant states are beneficially held by not more than 56 shareholders. Of the said 149,525 shares, 144,935 shares are beneficially owned by Ernest Alschuler, in whose name said shares are registered. Said shares are

held by Leonore S. Alschuler, Milton D. Block and Ernest Alschuler, Trustees under an Indenture of Trust dated December 31, 1956, of which said Ernest Alschuler is the beneficiary. It is stated that no other person, firm, corporation or trust owns, either legally or beneficially, ten percentum or more of the outstanding voting securities of Applicant. Applicant further states that it is not making and does not presently propose to make a public offering of its securities.

Section 3 (c) (1) of the act excepts from the definition of an "investment company" any issuer whose outstanding securities (other than short-term paper) are beneficially owned by not more than one hundred persons and which is not making and does not presently propose to make a public offering of its securities. Section 8 (f) of the act provides, in part, that whenever the Commission, upon application finds that a registered company has ceased to be an investment company, it shall so declare by order and upon the taking effect of such order the registration of such company shall cease to be in effect. Section 8 (f) further provides that an order thereunder may be made upon conditions necessary for the protection of investors.

Notice is further given that any interested person may, not later than May 13, 1958, at 5:30 p. m., submit to the Commission in writing any facts bearing upon the desirability of a hearing on the matter and may request that a hearing be held, such request stating the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D. C. At any time after said date, the application may be granted as provided in Rule N-5 of the rules and regulations promulgated under the act.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F. R. Doc. 58-3367; Filed, May 5, 1958;
8:47 a. m.]

[File No. 248-1598]

GEM STATE SECURITIES CORP.

ORDER TEMPORARILY SUSPENDING EXEMPTION, STATEMENT OF REASONS THEREFOR, AND NOTICE OF OPPORTUNITY FOR HEARING

APRIL 30, 1958.

I. On December 6, 1957, Gem State Securities Corporation was incorporated under the laws of the State of Idaho, with its principal place of business at Boise, Idaho, for the purpose of organizing, operating and managing a life insurance company under the laws of Idaho. The company filed with the Commission on March 7, 1958 a notification and offering circular relative to a proposed offering of 100,000 shares of its \$1.00 par value stock at \$2.50 per share for an

aggregate offering of \$250,000, for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933, as amended, pursuant to the provisions of section 3 (b) thereof and Regulation A promulgated thereunder. James M. Raymond and W. Floyd Sparrow were named as underwriters.

II. The Commission has reasonable cause to believe that the Regulation A exemption for the above filing is not available because the terms and conditions of Regulation A have not been complied with in that:

(a) The offering of the securities was commenced and securities sold prior to the time permitted by Rule 255 (a), and at a different price from that stated in the offering circular;

(b) The offering of the securities was made and the securities sold in jurisdictions other than those set forth in Item 8 of the notification on Form 1-A; and

(c) An offering circular has not been and is not being delivered to offerees and purchasers of the securities as required by Rule 256 (a).

III. It is ordered, Pursuant to Rule 261 of the general rules and regulations under the Securities Act of 1933, as amended, that the exemption under Regulation A be, and it hereby is, temporarily suspended.

Notice is hereby given that any person having any interest in the matter may file with the Secretary of the Commission a written request for hearing within thirty days herefrom; that, within twenty days after receipt of such request, the Commission will, or at any time upon its own motion may, set the matter down for hearing at a place to be designated by the Commission for the purpose of determining whether this order of suspension should be vacated or made permanent, without prejudice, however, to the consideration and presentation of additional matters at the hearing, that if no hearing is requested and none is ordered by the Commission, the order shall become permanent on the thirtieth day after its entry, and shall remain in effect unless or until it is modified or vacated by the Commission, and that notice of the time and place for said hearing will be promptly given by the Commission.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F. R. Doc. 58-3368; Filed, May 5, 1958;
8:47 a. m.]

DEPARTMENT OF JUSTICE

Office of Alien Property

BARONNE ALICE MARIANNA DE ZILUCA

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration

thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property and Location

Baronne Alice Marianna de Ziluca; Hotel Tivoli, Avenida da Liberdade, Lisbon, Portugal; Claim No. 63172; \$7,628.09 in the Treasury of the United States; and the following securities, presently in the custody of the Federal Reserve Bank, New York: \$22,000 Federal Republic of Germany Ext. issued 1953 German Ext. loan of 1924, 5½ percent dollar bonds, due 10-15-59—Bond Nos. 38817-38 at \$1,000 each; \$6,000 Federal Republic of Germany, 1953 Funding issue, Ext. loan of 1924, 3 percent dollar bonds, due 10-15-72, Bond Nos. 6748-53 at \$1,000 each; \$50 Federal Republic of Germany, 1953 Funding issue, Ext. loan of 1924, 3 percent dollar bonds due 10-15-72, Non-interest bearing certificate, Scrip Certificate No. 05037; \$3,000 Federal Republic of Germany, Prussia Conversion 1953 issue, 4 percent dollar bonds due 10-1-72, Bond Nos. 9579 and 9643-4 at \$1,000 each; 96 coupons due 4-15-37 through 10-15-52 detached from Free State of Prussia 6 percent SFGB Ext. 1927 loan due 10-15-52, Bond Nos. 17369-70, 02900; \$400 Federal Republic of Germany, Conversion and Funding issue, 1953 ten year 3 percent dollar bonds due 1-1-63 with 7-1-58 sca, Bond Nos. C006757-60 at \$100 each; 9 coupons due 1-1-40 through 1-1-41 detached from Conversion Office for German Foreign Debts, 3 percent dollar bonds Nos. 97649-51, due 1-1-46.

Vesting Order No. 17983.

Executed at Washington, D. C., on April 28, 1958.

For the Attorney General.

[SEAL] DALLAS S. TOWNSEND,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 58-3373; Filed, May 5, 1958;
8:48 a. m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

MAY 1, 1958.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 34648: Wrought iron or steel pipe—Interstate points to Clarkwood, Tex. Filed by Southwestern Freight Bureau, Agent (SWFB No. B-7274), for interested rail carriers. Rates on pipe, wrought iron or steel, and related articles, carloads from specified points in official (including Illinois), western trunk-line, southern, and southwestern territories to Clarkwood, Tex.

Grounds for relief: Commercial competition with Corpus Christi, Tex.

Tariff: Supplement 147 to Southwestern Freight Bureau, Agent, tariff I. C. C. 4116.

FSA No. 34649: Anhydrous ammonia between Illinois and southern territories. Filed by Illinois Freight Association, Agent (IFA No. 3), for interested rail carriers. Rates on anhydrous ammonia, tank-car loads between points in Illinois

territory, on the one hand, and points in southern territory, on the other.

Grounds for relief: Short-line distance formula, grouping, and relief line arbitrations.

Tariff: Supplement 2 to Illinois Freight Association, Agent, tariff I. C. C. 899.

FSA No. 34650: *Paper and paper articles between points in official territory.* Filed by O. E. Schultz, Agent (ER No. 2437), for interested rail carriers. Rates on paper, paper articles, and related commodities, carloads, also cores, skids, or platforms, empty, returned, used in transportation of paper articles, carloads from and to points in official territory excluding northern Illinois, southern Wisconsin, and extended zone C in Wisconsin.

Grounds for relief: Short-line distance formulas, and rates made with relation thereto, and short or relief-line arbitrations.

Tariffs: Traffic Executive Association-Eastern Railroads, Agent, tariff I. C. C. C-13, and another tariff named in the application.

FSA No. 34651: *Potatoes from and to points within Western Trunk Line territory and to points in southern territory.* Filed by Western Trunk Line Committee, Agent (WTL No. A-1978), for interested rail carriers. Rates on potatoes, other than sweet, carloads from specified points in western trunk line territory to specified points in that territory, also to specified points in southern territory.

Grounds for relief: Motor truck competition.

Tariffs: Supplement 144 to Western Trunk Line Committee, Agent, tariff I. C. C. A-3511 and two other schedules.

FSA No. 34652: *Paper and paper articles—Denver, Colo., to Southwest.* Filed by Southwestern Freight Bureau, Agent (SWFB No. B-7276), for interested rail carriers. Rates on paper and related articles, carloads, also wallboard, carloads from Denver, Colo., to points in Arkansas, Louisiana (west of the Mississippi River), southern Missouri, eastern New Mexico, Oklahoma, and Texas.

Grounds for relief: Short-line distance formula, and market competition with other producing points.

Tariff: Supplement 78 to Southwestern Freight Bureau, Agent, tariff I. C. C. 4193.

FSA No. 34653: *T. O. F. C. Service—Prefabricated buildings from Galesburg, Ill., to southwestern points.* Filed by Southwestern Freight Bureau, Agent (SWFB No. B-7278), for interested rail carriers. Rates on metal buildings, metal prefabricated buildings, metal grain bins and metal silos, complete, knocked down or in sections, in specified minimum quantities loaded in or on trailers and transported on railroad flat cars from Galesburg, Ill., to specified points in Oklahoma, and Texas.

Grounds for relief: Motor truck competition.

Tariff: Supplement 48 to Southwestern Freight Bureau, Agent, tariff I. C. C. 4254.

By the Commission.

[SEAL]

HAROLD D. MCCOY,
Secretary.

[F. R. Doc. 58-3371: Filed, May 5, 1958;
8:48 a. m.]



